

Sushi operators penalised more than \$380,000

3 June 2019

The Fair Work Ombudsman has secured \$383,616 in penalties against the operators of three 'Tokyo Sushi' outlets in regional New South Wales for underpaying workers over \$70,000.

The Federal Circuit Court imposed a total of \$63,936 in penalties against Kiyoshi Hasegawa for her role in underpaying a total of 31 employees across three outlets in the Newcastle and Central Coast regions in 2016.

In addition, two companies Ms Hasegawa and her family own, Hasegawa & Ye International Pty Ltd and Heiwa International Pty Ltd, have been penalised \$150,120 and \$169,560 respectively.

The penalties are the result of two proceedings by the Fair Work Ombudsman against the companies, which the Court heard jointly.

The penalties were imposed after Ms Hasegawa and the companies admitted underpaying 16 employees who worked at two Tokyo Sushi outlets at the Erina Fair shopping centre in the Central Coast region during a six-month period a total of \$48,318 and underpaying 15 employees who worked at a Tokyo Sushi outlet at Fletcher, in Newcastle, during an eight-month period a total of \$22,567.

Ms Hasegawa and Hasegawa & Ye International Pty Ltd have not owned or operated the Tokyo Sushi – The Corner Store at Erina Fair Shopping Centre since July 2017.

A number of the underpaid employees were visa holders and eight of the underpaid employees were juniors, including one 17-year-old worker on the Central Coast and seven workers aged between 16 and 20 at the Newcastle outlet.

Fair Work Ombudsman Sandra Parker highlighted that improving workplace compliance in the fast food industry is a priority for the regulator.

"Young migrant workers can be particularly vulnerable to exploitation if they are reluctant to complain due to visa concerns or unaware of their workplace rights. The Fair Work Ombudsman takes the blatant underpayment of vulnerable workers particularly seriously, which has been supported by the Court's substantial penalty," Ms Parker said.

Fair Work Ombudsman inspectors discovered the underpayments when they audited more than 40 sushi outlets across Canberra, South-East Queensland, the Hunter, Central Coast, Coffs Harbour and North Coast regions in NSW.

"Inspectors will continue to conduct targeted audits across the fast food, restaurant and café sector and we will hold employers accountable if they are not meeting their lawful obligations. We encourage any workers with concerns about their pay to contact the Fair Work Ombudsman for free advice and assistance," Ms Parker said.

Pay rates at the three Tokyo Sushi outlets at Newcastle and the Central Coast did not comply with the Fast Food Industry Award 2010, with workers instead paid hourly rates on weekdays ranging between \$9 and \$19 at the Newcastle outlets and between \$10 and \$19 at the Central Coast store, plus an additional 25 per cent on Saturdays and an additional 50 per cent on Sundays.

The approach led to underpayment of the minimum weekday rates, casual loadings and penalty rates for weekend and public holiday work. Both companies also contravened laws relating to superannuation entitlements and record-keeping and Heiwa International contravened minimum engagement period obligations.

Judge Philip Dowdy described the contraventions as "serious" and said there was "no excuse" for them.

"The simple fact of the matter is that persons who engage in business activities which necessitate the employment of staff are under a strict obligation to pay their staff the just entitlements of the staff in accordance with law, whether the relevant employer is a major corporation or, as here, a family business," Judge Dowdy said.

"Employees are entitled to respect and part of that respect is to pay them their full entitlements which must be recognised and known to the employer."

Judge Dowdy said the penalties should deter Ms Hasegawa and the companies as well as "others who might be inclined to contravene the Fair Work Act in a similar fashion".

Most of the underpayments have been rectified but the Court has ordered Ms Hasegawa, Hasegawa & Ye International Pty Ltd and

Heiwa International Pty Ltd to back-pay the final outstanding amounts to employees within 28 days.

The Court has also ordered the companies to commission an external audit of their compliance and rectify any underpayments found, and to display workplace notices detailing workers' rights and alerting workers to the Fair Work Ombudsman's Record My Hours app.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

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NOTE: Hasegawa & Ye International Pty Ltd no longer owns or operates Tokyo Sushi – The Corner Store at Erina Fair Shopping Centre.

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