

Subway franchisee penalised \$65,000

4 March 2019

The Fair Work Ombudsman has secured \$65,438 in penalties in Court against the former franchisee of two Subway outlets in Sydney for underpaying a Chinese worker more than \$16,000.

The Federal Circuit Court penalised Danmin Zhang \$9,255 - who formerly operated Subway franchise outlets at Artarmon and Stanmore. The company Ms Zhang and her husband operate, G & Z United Pty Ltd, has been penalised a further \$56,183.

Fair Work Inspectors found the worker, a Chinese national, had been underpaid a total of \$16,345 for work performed across both stores, after she was paid unlawful flat rates of \$14 to \$14.50 per hour.

Under the Fast Food Industry Award 2010, she was entitled to receive minimum rates of more than \$18, plus casual loading, for ordinary hours, and penalty rates of up to \$52.22 on public holidays.

Fair Work Ombudsman Sandra Parker said the regulator investigated after the worker lodged a request for assistance.

"It is unlawful for employers to pay their employees low, flat rates that undercut minimum Award wage rates. This franchisee paid their worker a flat rate that was \$4 below the lawful rate, and now faces paying a \$65,000 penalty from the Court."

"The penalty should send a message to fast food businesses that compliance in the workplace is not an option - it's the law. Every worker in Australia has the same workplace rights and we encourage anyone with concerns to contact the Fair Work Ombudsman," Ms Parker said.

The affected worker, a casual food and beverage attendant aged in her late 20s, was underpaid between October 2014 and April 2016. She was in Australia on a Skilled Nominated (subclass 190) visa at the time. The worker was back-paid in full in 2017.

The worker was underpaid her minimum hourly rates for ordinary hours, casual loadings and penalty rates for evening, weekend and public holiday work.

In imposing the penalties, Judge Julia Baird found that ensuring compliance with minimum standards was a very significant factor and the penalties imposed should send a message to the community and to employers of the importance of complying with their legal obligations.

The Court found a special clothing allowance was also underpaid and laws relating to record-keeping, pay slips and requirements to inform employees about their terms of engagement and classification were also breached.

Employers and employees can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their workplace rights and obligations. Small business callers receive priority service. A free interpreter service is available on 13 14 50.

Ms Zhang and G & Z United Pty Ltd no longer operate the Subway outlets at Artarmon and Stanmore. The FWO makes no allegations against the current operators.

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Media inquiries:

Matthew Raggatt, Senior Media Adviser

Mobile: 0466 470 507

matthew.raggatt@fwo.gov.au (mailto:matthew.raggatt@fwo.gov.au)

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