

Café allegedly paid workers in food and drink

23 October 2019

The Fair Work Ombudsman has commenced legal action in Court against the operators of a Brisbane café that allegedly partially paid some of its employees in food and drink.

Facing the Federal Circuit Court are Timi Trading Pty Ltd, which operates Café 63 Chermside at the Westfield Chermside shopping centre, company director and manager Tien Hoang Le, company manager Minh Vo Duy Nguyen and company owner-director Hamish Watson.

The regulator alleges 11 employees at Café 63 Chermside were paid part of their wages in meals, desserts and drinks during two periods between August 2017 and January 2018.

Most of the affected workers were visa holders, including seven juniors aged under 21, who worked as cooks, kitchen attendants and food and beverage attendants.

Fair Work Ombudsman Sandra Parker said that inspectors investigated after receiving underpayment allegations.

“All employees in Australia are entitled to be paid the minimum pay rates that apply to their positions – in money, not food. If we consider that employers are breaching their lawful obligation, we will take enforcement action so employees receive what they are entitled to.”

“Businesses should be aware that we are cracking down on the underpayment of vulnerable workers in the fast food, restaurant and café sector as a priority. Any worker with concerns about their pay or entitlements, should contact the Fair Work Ombudsman,” Ms Parker said.

The FWO alleges that Timi Trading's conduct relating to the 11 Café 63 Chermside employees breached the provision of the Fair Work Act requiring that employees be paid in money.

Fair Work Inspectors allegedly found that eight of the 11 employees were paid according to Individual Flexibility Agreements (IFAs) that provided for flat hourly rates and a list of 'bonuses' and 'allowances' - instead of being provided their lawful entitlements under the Restaurant Industry Award 2010, such as overtime and penalty rates.

It is alleged the IFA 'allowances' included employees being allowed food and drink up to the value of \$42 per day when working, including \$20 in meals, \$7 in desserts and \$15 in drinks.

The FWO alleges that Timi Trading's conduct also breached workplace laws by failing to ensure the IFAs passed the better-off-overall test (which requires employers to ensure employees are better off overall under an IFA than under the relevant Award) and failing to detail in the IFAs how each individual was better off overall under the IFA.

Timi Trading allegedly also breached workplace laws by providing the FWO with false and misleading records, failing to make and keep proper records and agreements, and failing to pay one employee for her absence on a public holiday.

Mr Le and Ms Nguyen were allegedly involved in breaches relating to all 11 workers and Mr Watson was allegedly involved in breaches relating to the eight workers engaged under IFAs. The alleged record-keeping failures have prevented FWO from calculating back-payments.

Timi Trading faces maximum penalties per breach of up to \$63,000, while Mr Le, Ms Nguyen and Mr Watson face maximum penalties per breach of up to \$12,600. The FWO is seeking court orders requiring an independent audit of Timi Trading's wage payment practices and the completion of courses for employers at www.fairwork.gov.au. A directions hearing is listed in the Federal Circuit Court in Brisbane on 21 February, 2020.

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Media inquiries:

Ryan Pedler, Assistant Director - Media
Mobile: 0411 430 902
ryan.pedler@fwo.gov.au (<mailto:ryan.pedler@fwo.gov.au>)

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Contact us

Fair Work Online: www.fairwork.gov.au

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