

Coffee Club franchisee to back-pay migrant worker

29 October 2019

The operators of a western Sydney café will back-pay a casual waitress \$36,745 and overhaul its workplace practices, after signing a Court-Enforceable Undertaking with the Fair Work Ombudsman.

Sean & Eddy Pty Ltd, trading as Coffee Club Blacktown, and sole director Ji Hae Hong signed up to the undertaking after the employee contacted the workplace regulator, sparking an investigation.

Fair Work Inspectors found that the worker was paid flat hourly rates of between \$10 and \$15.50, despite being entitled to ordinary hourly rates including casual loading of up to \$25.28, up to \$30.33 on weekends and up to \$50.55 on public holidays under the Restaurant Industry Award 2010.

The company also admitted that it failed to issue any pay slips to the worker or keep any employment records, and did not pay the employee superannuation.

A Korean national, the worker was in Australia on a working holiday visa and later a student visa during her employment at the café from September 2016 and October 2018.

Fair Work Ombudsman Sandra Parker said a Court-Enforceable Undertaking was appropriate as the company had committed to back-paying staff and will face ongoing scrutiny from inspectors.

“The Fair Work Ombudsman has no tolerance for employers who pay migrant workers flat rates that are below the pay they are lawfully entitled to under the relevant award. Migrant workers can be particularly vulnerable due to their visa status but are entitled to the same pay as any other worker.”

“Improving compliance with workplace laws among franchises in the fast food, restaurant and café sector is a priority. We encourage any Coffee Club employees with pay concerns, or franchisees seeking help with their workplace obligations, to contact us for free advice and assistance.”

“The Fair Work Ombudsman will closely monitor compliance with the Court-Enforceable Undertaking and will not hesitate to litigate if there are further breaches of workplace laws,” Ms Parker said.

Under the EU, the company must engage independent external auditors to check that all employees receive correct entitlements in 2019 and 2020, and rectify any errors. Ms Hong will also write a letter of apology to the worker, and place a company notice in the Blacktown Advocate apologising.

Sean & Eddy Pty Ltd has admitted that it breached workplace laws. In addition to back-paying staff, the company will make a gesture of contrition through a \$3,000 payment to the Commonwealth Government’s Consolidated Revenue Fund.

Last month, the Fair Work Ombudsman commenced legal action (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/september-2019/20190917-jmsl-litigation-media-release-final>) against the operator of the Coffee Club franchise at the Westfield Geelong shopping centre for alleged underpayments of two young workers and providing false and misleading pay slips and records to Fair Work Inspectors.

In 2017, the Fair Work Ombudsman secured more than \$180,000 in penalties (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/may-2017/20170504-coffee-club-litigation>) against a former Coffee Club café franchisee in Brisbane for contraventions including requiring an overseas worker to pay back \$18,000 of his wages through an unlawful cash-back payment.

The Court-Enforceable Undertaking is available at www.fairwork.gov.au (<http://www.fairwork.gov.au/>)

The FWO has targeted information to help those in the franchise sector (<https://www.fairwork.gov.au/find-help-for/franchises>) meet their obligations, as well as those working or running businesses in the FRAC sector (<https://www.fairwork.gov.au/find-help-for/fast-food-restaurants-cafes>) .

Employers and employees can visit www.fairwork.gov.au (<http://www.fairwork.gov.au/>) or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their rights and obligations in the workplace. A free interpreter service is available on 13 14 50.

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Download the [Sean and Eddy Pty Ltd Enforceable Undertaking \(DOCX 156.2KB\)](https://www.fairwork.gov.au/ArticleDocuments/1505/sean-and-eddy-pty-ltd-enforceable-undertaking-redacted.docx.aspx) (<https://www.fairwork.gov.au/ArticleDocuments/1505/sean-and-eddy-pty-ltd-enforceable-undertaking-redacted.docx.aspx>) ([PDF 619.3KB](https://www.fairwork.gov.au/ArticleDocuments/1505/sean-and-eddy-pty-ltd-enforceable-undertaking-redacted.pdf.aspx)) (<https://www.fairwork.gov.au/ArticleDocuments/1505/sean-and-eddy-pty-ltd-enforceable-undertaking-redacted.pdf.aspx>)

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Page reference No: 9287

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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