

Café penalised for paying workers in food and drink

3 December 2020

The Fair Work Ombudsman has secured \$139,800 in penalties in proceedings against the operator of a Brisbane café that partially paid some of its employees in food and drink.

The Federal Circuit Court has imposed a \$95,000 penalty against Timi Trading Pty Ltd, which operated Café 63 Chermside at the Westfield Chermside shopping centre.

In addition, company director and manager Tien Hoang Le and company manager Minh Vo Duy Nguyen have each been penalised \$20,000 for their involvement in all of the contraventions by the company; and Hamish Watson, the owner of the café 63 brand, has been penalised \$4,800 for his involvement in one contravention by the company.

Eleven employees at Café 63 Chermside were paid part of their wages in food and drink during two periods between August 2017 and January 2018.

Mr Le and Ms Nguyen were involved in breaches relating to all 11 workers and Mr Watson was involved in breaches relating to six of the workers.

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 inspectors investigated after receiving underpayment allegations.

Fair Work Ombudsman Sandra Parker said Timi Trading's conduct breached the provision of the Fair Work Act requiring that employees be paid in money.

"Purporting to pay employees in food and drink is a clear breach of workplace laws and employers can face significant penalties," Ms Parker said.

"Employers have a lawful responsibility to ensure they understand the lawful minimum wage rates and entitlements that apply to their staff and they must pay those wages and entitlements in full at all times. A range of free resources are available at www.fairwork.gov.au to help employers comply with their obligations to their employees."

"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.

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 paid penalty rates and overtime under the Restaurant Industry Award 2010.

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

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 also breached workplace laws by providing the FWO with false and misleading records, failing to make and keep proper records and failing to enter into written part-time agreements.

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