

Perth franchisee faces tenfold increase in max penalties

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The Fair Work Ombudsman has commenced its first legal action in Western Australia under the 'serious contraventions' provisions of the Protecting Vulnerable Workers laws, alleging a former Han's Café franchisee in Perth underpaid vulnerable workers despite having previously faced Court for similar conduct.

FWO has commenced legal action in the Federal Circuit Court against Tac Pham Pty Ltd, the former franchisee of the Han's Café Rockingham outlet, and the former general manager of the outlet, Cuc Thi Thu Pham.

It is alleged that the company and Ms Pham breached pay slip laws and underpaid 11 employees - including a number of young and migrant workers – a total of \$5,022 between October 2017 and April 2018. The employees have been back-paid.

It is alleged that two of the contraventions – relating to pay slips and underpayment of minimum wages – meet the definition of 'serious contraventions' under the Protecting Vulnerable Laws because of the alleged repeat offending.

Under the laws, which came into effect in September 2017, the maximum penalties for serious contraventions are \$630,000 per breach for a company and \$126,000 for an individual, 10-times the penalties which would ordinarily apply.

Fair Work Ombudsman Sandra Parker said that increased maximum penalties were brought in following community concerns about worker exploitation in Australia.

"Employers are on notice that the Fair Work Ombudsman is making full use of the Protecting Vulnerable Workers laws to ensure that any individuals or companies who commit serious contraventions are held to account," Ms Parker said.

It is the third matter nationally, and the first in WA, in which the FWO has alleged the increased maximum penalties should apply.

The legal action comes after the Fair Work Ombudsman secured a total of \$45,000 in penalties in Court against Tac Pham Pty Ltd and Ms Pham last year in relation to pay slip laws being breached and 22 staff being underpaid \$27,920 at Han's Café Rockingham between December 2014 and December 2015.

It is alleged that FWO Inspectors discovered the breaches are the subject of the latest litigation when they investigated the business during an auditing campaign. Allegations include underpayment of ordinary minimum hourly rates, penalty rates, minimum shift-pay and an allowance, and breaches of pay slip laws.

In addition to the penalties faced for the alleged 'serious contraventions', Tac Pham Pty Ltd faces penalties of up to \$63,000 per contravention for other alleged contraventions and Ms Pham faces penalties of up to \$12,600 per contravention for other alleged contraventions.

A directions hearing is listed in the Federal Circuit Court in Perth on 13 February, 2020.

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