

## South Yarra restaurant faces Court

13 July 2020

The Fair Work Ombudsman has commenced legal action against the operators of Italian eatery Gilson Restaurant in the inner Melbourne suburb of South Yarra.

Facing the Federal Circuit Court is James McBride and his company Domain Botanical Business Pty Ltd.

The regulator alleges that the company used flat hourly rates (in some cases as low as \$18 per hour) for its casuals that led to various underpayments, including of minimum hourly rates, casual loading, overtime rates and penalty rates for weekend, public holiday, early morning and late night work under the Restaurant Industry Award 2010. Some employees were paid higher amounts on public holidays.

The FWO alleges that the company failed to undertake reconciliations for its full-time annualised salary employees and breached record-keeping laws, including by failing to record start and finish times for most salaried staff. It is also alleged the restaurant did not provide the required unpaid meal breaks.

It is alleged that 40 employees were underpaid a total of \$53,850 between December 2017 and June 2018. 20 of the allegedly underpaid workers were visa holders, most from non-English speaking countries, and about half of the workers were aged 25 or under when they commenced employment.

Fair Work Ombudsman Sandra Parker said the agency would continue to enforce workplace laws in a proportionate manner during the COVID-19 pandemic, including taking court action to recover any underpayments for vulnerable workers and to deter similar future conduct.

“The Fair Work Ombudsman prioritises enforcement action for matters involving visa holders and young workers, as we know they can be at risk of exploitation due to their visa status, language barriers and a lack of knowledge of workplace laws.”

“Employers should take note that it is unlawful to pay flat hourly rates if they fail to cover all of a worker’s entitlements, including loadings and penalty rates. Employers using annual salary arrangements must comply with all relevant rules about reconciling their employees’ payments with hours worked,” Ms Parker said.

Fair Work Inspectors started an investigation into the restaurant as part of an auditing campaign. The Fair Work Ombudsman recently announced the fast food, restaurant and café industry will continue to be a focus of compliance and enforcement activities in the year ahead.

Affected Gilson Restaurant workers were generally engaged as kitchen attendants, waiters or cooks. The visa holders were most commonly in Australia on student visas, working holiday visas or partner visas, and came from a range of countries including France, Brazil, Nepal and Chile, among others.

Domain Botanical Business Pty Ltd faces penalties of up to \$63,000 per contravention, while Mr McBride faces penalties of up to \$12,600 per contravention.

In addition to penalties, the Fair Work Ombudsman is seeking orders for the company to rectify all alleged underpayments, plus interest and superannuation.

The matter has a directions hearing in the Federal Circuit Court in Melbourne on 17 August 2020.

Free targeted resources for workers and employers in the fast food, restaurants and café industry can be found at [www.fairwork.gov.au/frac](http://www.fairwork.gov.au/frac) (<http://www.fairwork.gov.au/frac>)

The Fair Work Ombudsman has an agreement with the Department of Home Affairs where visa holders can ask for our help without fear of their visa being cancelled. Further information is available at [www.fairwork.gov.au/find-help-for/visa-holders-migrants](http://www.fairwork.gov.au/find-help-for/visa-holders-migrants) (<http://www.fairwork.gov.au/find-help-for/visa-holders-migrants>)

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