

Vietnamese restaurant in court

25 January 2021

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against the operators of a Melbourne restaurant.

Facing court are House of Hoi An Pty Ltd, which operated a Vietnamese restaurant trading as 'House of Hoi An' in Prahran, and the company's sole director Keerthi Hapugasdeniya.

The regulator investigated after receiving requests for assistance from employees who had worked at the restaurant.

A Fair Work Inspector issued a Compliance Notice in October 2019 after forming a belief that the company had underpaid three employees – two cooks and one food and beverage attendant - their entitlements under the Restaurant Industry Award 2010.

The employees were visa holders, with two workers from Vietnam and one from Sri Lanka.

The inspector believed the three employees had been underpaid their entitlements including minimum wage rates, casual loadings, annual leave entitlements and penalty rates for weekend, public holiday and night work between 2016 and 2019.

The FWO alleges the company, without reasonable excuse, failed to comply with the Compliance Notice. The notice required the company to calculate and back-pay the workers' entitlements.

The FWO also alleges that record-keeping and pay slip laws were breached.

In line with the FWO's proportionate approach to regulation during the COVID-19 pandemic, the FWO made several attempts to secure voluntary compliance before commencing proceedings.

Fair Work Ombudsman Sandra Parker said that the regulator would continue to enforce workplace laws and take businesses to court where lawful requests are not complied with.

"Under the Fair Work Act, Compliance Notices are important tools used by inspectors if they form a belief that an employer has breached workplace laws," Ms Parker said.

"Where employers do not comply with our requests, we will take appropriate action to protect employees. A court can order the business to pay penalties in addition to back-paying workers."

"Any employees with concerns about their pay or entitlements should contact the Fair Work Ombudsman for free assistance."

The Fair Work Ombudsman is seeking penalties. House of Hoi An Pty Ltd is facing maximum penalties of between \$31,500 and \$63,000 per contravention, while Mr Hapugasdeniya is facing maximum penalties of between \$6,300 and \$12,600 per contravention.

The regulator is also seeking orders for the company to comply with the Compliance Notice, which includes rectifying any underpayments in full, plus superannuation and interest. A directions hearing is listed in the Federal Circuit Court in Melbourne on 18 February 2021.

Employers and employees can visit 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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