

Former Chatime franchisee and directors penalised

4 March 2021

The Fair Work Ombudsman has secured \$57,800 in penalties in court against a former Chatime bubble tea franchisee in Sydney that underpaid 17 workers through its use of unlawfully low flat rates.

The Federal Circuit Court has imposed a \$41,600 penalty against Panol DC Pty Ltd, which formerly operated the Chatime Cinema City outlet on George Street, in the Sydney CBD. The company's only directors, Leiden Emmanuel Panol and Carlo Benjamin Dela Cruz, have also been penalised \$9,600 and \$6,600 respectively.

Mr Dela Cruz's full penalty and \$6,600 of Mr Panol's penalty are suspended for three years and will then be discharged without requiring payment, if they do not breach the Fair Work Act in that time.

Between January and November 2017, employees at Chatime Cinema City were generally paid flat rates of between \$13 to \$18.55 per hour, which resulted in underpayment of the ordinary hourly rates, casual loadings and a special clothing allowance they were entitled to under the Fast Food Industry Award 2010. Public holiday penalty rates were also underpaid.

Total underpayments of \$46,372 have been rectified. The company and Mr Panol also breached record-keeping laws.

Eight of the employees were junior workers – aged 20 or younger – when they were underpaid. Nine of the underpaid workers were visa holders, mostly international students.

Fair Work Ombudsman Sandra Parker said the significant penalties sent a message to franchise outlets about paying their employees' lawful entitlements.

"It is never acceptable to set pay rates that breach employees' minimum rights, and we continue to prioritise enforcement of the law among fast food outlets and established and emerging franchise chains, who we know often employ vulnerable young workers and visa holders," Ms Parker said.

"All franchise outlets are on notice that they must pay staff lawful minimum pay rates and franchisors should take responsibility for ensuring that their franchisees comply with the law. We encourage anyone with concerns about their pay to contact the Fair Work Ombudsman."

Federal Circuit Court Judge Robert Cameron said the underpayments were "significant" for the employees, and there was a need to deter other employers in the take away food service industry.

"[T]here is a need to communicate to employers a no-tolerance policy of underpayment and record-keeping contraventions, particularly as that industry employs a vulnerable workforce of visa holders," Judge Cameron said.

"I also accept the [Fair Work] Ombudsman's further submission that there are significant levels of non-compliance within the franchise sector and the penalty to be imposed on the respondents should recognise this and underline the necessity for franchisees to comply with the workplace laws."

Panol DC Pty Ltd sold its franchise back to the Australian franchisor of Chatime in January 2019.

The Fair Work Ombudsman has an agreement with the Department of Home Affairs that allows visa holders to seek help without fear of their visa being cancelled, with details available on the FWO's [website \(www.fairwork.gov.au/find-help-for/visa-holders-migrants\)](http://www.fairwork.gov.au/find-help-for/visa-holders-migrants) . Workers and employers can access free information at www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 or a free interpreter service on 13 14 50.

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