

NSW restaurant operators face Court over alleged failure to rectify underpayments

15 August 2013

The Fair Work Ombudsman is taking legal action against the operators of a NSW Central Coast restaurant for allegedly failing to comply with a demand to back-pay nine underpaid employees.

Facing court is Renee Martin, also known by the name Jackie Elcham, who owns the restaurant My Favourite Italian, at Terrigal.

Also facing court is Ms Martin's private company, Jaycee Trading Pty Limited, through which she operates the restaurant.

Nine employees of My Favourite Italian, including two juniors aged 16 and 19 at the time, were allegedly underpaid a total of \$12,178 in minimum wages, penalty rates and other entitlements between July 2011 and June 2012.

Fair Work Inspectors discovered the alleged underpayments when they investigated complaints lodged by employees, who worked as wait staff and in the kitchen.

It is alleged that in May this year, a Fair Work Inspector delivered a Compliance Notice to Ms Martin that required her company to rectify the underpayments within 14 days.

It is alleged that Ms Martin was involved in her company failing to meet the requirements of the Compliance Notice and that no application for a review of the Compliance Notice was made.

Under the Fair Work Act, employers must comply with Compliance Notices issued by Fair Work Inspectors or make a court application for a review if they are seeking to challenge the Notice.

It is also alleged that Ms Martin was involved in her company further breaching workplace laws by failing to comply with two Notices to Produce employment records issued by Fair Work Inspectors during their investigation.

Under the Fair Work Act, employers must comply with requests to provide records relating to employees and former employees.

Fair Work Ombudsman, Natalie James, said the decision to launch legal action was made because enforcing compliance with Compliance Notices and Notices to Produce was fundamental for maintaining the integrity of Australia's workplace laws.

Ms Martin was allegedly involved in Jaycee Trading committing three breaches of workplace laws. She faces maximum penalties per breach ranging from \$5,100 to \$6,600 and her company faces maximum penalties per breach ranging from \$25,500 to \$33,000.

The Fair Work Ombudsman is also seeking orders from the court for the company to back-pay the employees in full. A directions hearing is listed in the Federal Circuit Court in Sydney on September 4.

Employers and employees seeking information and advice should visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

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Fair Work Online: www.fairwork.gov.au

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