

## Cairns sushi bar to back-pay almost \$50,000 to five Japanese, Korean employees

7 April 2014

The operators of two sushi kiosks in Cairns underpaid five casual employees almost \$50,000 in less than six months, the Fair Work Ombudsman has found.

The workers were short-changed amounts ranging from \$7,285 to \$12,177 as a result of being paid a flat hourly rate of \$9 for all hours worked.

This is below the minimum hourly rate and did not take account of penalty rates for weekends and public holidays or casual loadings.

They should have been paid between \$22.86 and \$30.06 an hour, depending on their shift.

The five employees, three Japanese and two Koreans aged between 21 and 32, were in Australia on working holiday visas.

They worked for the Mizuno Trading Company Pty Ltd, trading as Fuji Homestyle Cuisine.

The company has two sushi kiosks at the Cairns Central shopping centre.

The employees prepared Japanese-style food, served customers and cleaned.

The Fair Work Ombudsman commenced an investigation after receiving complaints from the employees.

Following an investigation by the Fair Work Ombudsman, Mizuno Trading has agreed to back-pay the workers in full.

Company director Shoichi Mizuno told inspectors he paid only \$9 an hour because that was "all he could afford" and the employees had agreed to this rate.

Mr Mizuno also told inspectors that \$9 was the "market rate" for this type of work in Japan.

Fair Work inspectors explained to Mr Mizuno his obligations under federal workplace laws and that the five employees should have been paid rates stipulated under the Fast Food Industry Award 2010.

Mr Mizuno and his company have apologised for the contraventions and agreed to reimburse the employees - who were short-changed for work they performed between April and August last year.

The company will make an upfront payment of \$20,000 and then repay the balance in monthly instalments over 14 months.

It has also agreed to revamp its workplace policies to ensure future compliance with workplace laws.

As well as underpaying its staff, the Fair Work Ombudsman found Mizuno had failed to maintain proper employment records and issue pay-slips as required.

It was not the first time Mizuno Trading Company has come to the attention of the Fair Work Ombudsman.

A previous complaint in 2010 was resolved with the employer voluntarily by inspectors in the Cairns office.

As an alternative to litigation on the most recent breaches, Mr Mizuno and his company have entered into an Enforceable Undertaking with the Fair Work Ombudsman.

As part of the Enforceable Undertaking, Mr Mizuno and his company have expressed their "sincere regret" and apologised for the conduct.

The Enforceable Undertaking also requires Mizuno Trading to:

- implement systems and processes to ensure future compliance with the Fast Food Industry Award 2010 and the Fair Work Act 2009,
- Arrange an external professional to audit its compliance at six monthly intervals for the next two years, and
- Organise and ensure training on compliance with workplace laws is provided for all persons who have managerial responsibility.

Fair Work Ombudsman Natalie James says Enforceable Undertakings are one of a number of ways the Fair Work Ombudsman is improving the way her Agency is encouraging voluntary compliance with federal workplace laws.

"We are serious about our job of building knowledgeable and fairer workplaces and don't insist there is only one way to achieve compliance - education, positive motivators and deterrents are all important," she said.

Enforceable Undertakings were introduced by legislation in 2009 and the Fair Work Ombudsman has been using them to achieve strong outcomes against companies that breach workplace laws without civil court proceedings.

"Their purpose is to focus the employer on the tasks to be carried out to remedy the alleged contravention and/or prevent a similar contravention in the future," she said.

"Many of the initiatives included in Enforceable Undertakings - like compulsory training sessions - help to build a greater understanding of workplace responsibilities, motivate the company to do the right thing and help them avoid the same mistakes again."

Ms James says the Mizuno underpayment is an example to other employers of how a small mistake left over time can subsequently result in a hefty bill for back-payment.

The Fair Work Ombudsman has a particular focus on assisting small businesses to understand and meet their obligations to employees.

A dedicated webpage for small business, including free tools and resources, is available at [www.fairwork.gov.au/smallbusiness](http://www.fairwork.gov.au/smallbusiness) ([www.fairwork.gov.au/find-help-for/small-business](http://www.fairwork.gov.au/find-help-for/small-business)) .

Employers and employees seeking further information and advice can visit the website or call the Fair Work Infoline on 13 13 94. A free interpreter service is also available on 13 14 50.

Copy of the undertaking:

- [Enforceable Undertaking Mizuno Trading Company Pty Ltd \(PDF 1.3MB\) \(www.fairwork.gov.au/ArticleDocuments/584/Enforceable-Undertaking-Mizuno-Trading-Company-Pty-Ltd-Redacted.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/584/Enforceable-Undertaking-Mizuno-Trading-Company-Pty-Ltd-Redacted.pdf.aspx)

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