

Chinese restaurant must back-pay 31 employees almost \$70,000

15 August 2014

An Adelaide restaurant previously issued an on-the-spot fine over its record-keeping practices has been found to have underpaid its staff by tens of thousands of dollars.

The Fair Work Ombudsman has given the Chinese restaurant – Ding Hao on Gouger Street - a deadline of October 3 to back-pay 31 of its employees almost \$70,000.

The requirement is part of an Enforceable Undertaking the operator, Sing Ky Pty Ltd, has entered into with the Fair Work Ombudsman as an alternative to litigation.

Sing Ky paid its employees a flat hourly rate for all hours worked at Ding Hao, including weekends and public holidays, which was below that stipulated in the Restaurant Industry Award 2010.

The workers were underpaid their minimum hourly rate and failed to receive applicable casual loadings, overtime rates, split shift allowances and penalty rates.

Sing Ky received a \$350 Infringement Notice (on-the-spot fine) in December, 2012, after Fair Work inspectors found the restaurant was failing to issue pay-slips to employees within one day of them being paid.

A follow-up visit late last year to assess employment records and wages resulted in an investigation into the restaurant's compliance with federal workplace laws.

It found 31 employees – aged between 21 and 71 – had been short-changed a total of \$69,266 between December, 2012 and September, 2013.

Individual underpayments ranged from \$212 to \$5349.

An example is one employee underpaid \$3300 because she received a flat hourly rate of \$16 for all hours worked, when she should have been paid between \$20.97 and \$32.91, depending on her shifts.

Sing Ky must reimburse all outstanding entitlements and issue a written apology to the employees expressing its "sincere regret" for its conduct.

The company must also post a workplace notice advising other employees of its contraventions, giving a commitment that such behaviour will not occur again.

Further, Sing Ky directors must undertake workplace relations training on employee entitlements under the Fair Work Act and engage independent, external consultants to review and report on the company's compliance over the next three years.

It is the third Adelaide company to sign an Enforceable Undertaking this year.

In March, the Fair Work Ombudsman announced that KYB Pty Ltd, which trades as Mariana Market on Grote Street, had signed an Enforceable Undertaking after short-changing seven of its staff more than \$23,000.

- Read the [media release about KYB Pty Ltd, trading as Mariana Market \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/march-2014/company-reimburses-international-students-and-apologises-for-under-paying-their-wages\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/march-2014/company-reimburses-international-students-and-apologises-for-under-paying-their-wages) .

And in June, the agency revealed that Prospect-based NewKlean Management Services Pty Ltd had signed an Enforceable Undertaking after it was found to have underpaid eight of its employees more than \$14,000.

- Read the [media release about NewKlean Management Service Pty Ltd \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/june-2014/20140623-newklean-eu-presser\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/june-2014/20140623-newklean-eu-presser) .

Fair Work Ombudsman Natalie James says the Sing Ky matter should serve as a timely reminder to all employers of the importance of checking that they are paying their employees under the correct industrial instrument.

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.

“We use Enforceable Undertakings where we have formed a view that a breach of the law has occurred, but where the employer has acknowledged this and accepted responsibility and agreed to co-operate with us and fix the problem,” Ms James said.

“Many of the initiatives included in EUs 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.

“It also means we can resolve matters more speedily than if we proceed down a path towards litigation, often achieving outcomes, such as training sessions for senior managers, which are not possible through the Courts.”

The Fair Work Ombudsman’s new website – www.fairwork.gov.au – can assist small business operators find free information and advice.

Small businesses can sign up to a regular E-newsletter from the Fair Work Ombudsman with helpful workplace tips and information or call the Small Business Helpline on 13 13 94.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>).

Download:

- [Sing Ky Pty Ltd Enforceable Undertaking \(DOCX 110.2KB\) \(www.fairwork.gov.au/ArticleDocuments/837/Enforceable-Undertaking-Sing-Ky-Pty-Ltd.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/837/Enforceable-Undertaking-Sing-Ky-Pty-Ltd.docx.aspx) ([PDF 1.9MB\) \(www.fairwork.gov.au/ArticleDocuments/837/Enforceable-Undertaking-Sing-Ky-Pty-Ltd.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/837/Enforceable-Undertaking-Sing-Ky-Pty-Ltd.pdf.aspx)

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