

Do your homework before buying a business and avoid picking up a bill for costly mistakes

8 October 2014

The Fair Work Ombudsman today sounded a warning to potential buyers of existing businesses to ensure they double-check the terms and conditions of their new employees.

In particular, the Fair Work Ombudsman says potential buyers should satisfy themselves of minimum hourly pay rates and entitlements.

Fair Work Ombudsman Natalie James issued the cautionary message when revealing that a couple who purchased a business in Victoria had mistakenly continued to pay an employee the same rate she had received previously.

It was an error that has resulted in the couple being required to back-pay the former employee almost \$20,000 in outstanding wages.

While the former owners had paid the staff member correctly, subsequent increases in junior wage rates and minimum national wage rises were not passed on by the new owners.

Warren and Lindy Inkster, who run a company called Malt Cow Pty Ltd, bought The Sober Mule Café on the Nepean Highway at Mornington in 2010.

One of the employees was a part-time kitchen hand who worked at the café from October, 2010 until February, 2014.

For most of her employment, the young employee was paid just \$11.50 an hour.

The employee was 18 when she started working at The Sober Mule Café and was entitled to pay increases on her 19th and 20th birthdays and minimum national wage increases each July thereafter.

Because the employee has a disability, Malt Cow mistakenly assumed that she was receiving a supported wage, when in fact she was covered by the terms and conditions of the Restaurant and Industry Award 2010.

After the young worker contacted the Fair Work Ombudsman, an investigation found that she had been underpaid a total of \$19,622 during her three-and-a-half years at the café.

Fair Work inspectors also identified that Malt Cow had contravened the Award provisions when it reduced the employee's rostered hours without putting the change of agreed variation in writing.

Malt Cow has co-operated fully with the Fair Work Ombudsman and agreed to sign an Enforceable Undertaking.

The Undertaking required the company to:

- Back-pay all outstanding entitlements to the affected employee within six months and apologise in writing for the conduct,
- Provide a report within a month on steps taken to ensure its compliance with Commonwealth workplace laws,
- Post a workplace notice advising other employees of its contraventions, giving a commitment that such behaviour will not occur again,
- Undertake training on employer obligations under federal workplace laws, including managing employees with disabilities,
- Audit the company's compliance with workplace laws each year for the next three years, and
- Make a \$1000 donation to Disability Advocacy Victoria.

Ms James says the Malt Cow experience should serve as a timely reminder to potential business buyers of the need to understand and comply with workplace laws applicable to that workplace.

"We know workplace laws can be complicated for the uninitiated, and for those who are not industrial experts, but we ask small business to use the tools and resources that we provide for them and inform themselves," she said.

"In return, you will be able to act with confidence. This protects you. It means that if a problem arises down the track, you can demonstrate your intention to do the right thing."

Underpinning the Fair Work Ombudsman's website tools and resources is its award-winning Small Business Helpline, where

employers can get advice they can rely on with confidence.

The small business helpline – which launched in December to provide tailored advice to small business people – has now responded to more than 100,000 calls.

Small businesses can sign up to a regular E-newsletter from the Fair Work Ombudsman with helpful workplace tips and information.

Employers or employees seeking assistance can contact the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au.

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- [Malt Cow Pty Ltd Enforceable Undertaking \(PDF 2MB\) \(www.fairwork.gov.au/ArticleDocuments/837/enforceable-undertaking-malt-cow-pty-ltd.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/837/enforceable-undertaking-malt-cow-pty-ltd.pdf.aspx) ([DOCX 165.3KB\) \(www.fairwork.gov.au/ArticleDocuments/837/enforceable-undertaking-malt-cow-pty-ltd.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/837/enforceable-undertaking-malt-cow-pty-ltd.docx.aspx)

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