

Sydney Harbour restaurant on notice over workplace practices after ongoing staff underpayments

5 August 2015

A high-profile restaurant on Sydney Harbour is on notice over its workplace practices after repeated complaints from its staff about being underpaid.

In the latest incident, an Italian backpacker in Australia on a 417 working holiday visa was allegedly short-changed almost \$6000 whilst working as a kitchen hand last year.

The Fair Work Ombudsman found the employee was paid a flat rate of \$16.50 an hour in the last six weeks of his employment – less than the minimum hourly rate. While the employee was paid higher hourly rates before then, they were not enough to cover casual loadings and penalty rates.

The restaurant initially argued that it had a flexibility arrangement with the kitchen hand which provided “benefits” in return for the \$16.50 flat hourly rate, including discounted staff uniforms, on-the-job training, meals and drinks.

However, Fair Work Ombudsman Natalie James says the business was under a misguided belief that it could count such benefits as meeting its workplace obligations under the Restaurant Industry Award 2010.

A Compliance Notice was issued requiring the restaurant to back-pay the former kitchen hand \$5703 and another \$386 owed to a former waitress who was also underpaid. Under the Fair Work Act, employers must comply with Notices issued by Fair Work inspectors unless they have a reasonable excuse, or make a Court application to challenge the Notice.

On the day the Compliance Notice was due to expire, the restaurant sought and obtained a stay of the Notice to challenge it in the Federal Circuit Court in Sydney. In response, the Fair Work Ombudsman sought Court orders requiring the business to set out the grounds for its challenge and for the challenge to progress to a hearing by the Court.

The restaurant failed to comply with a requirement to set out the grounds of the challenge, but subsequently agreed to send cheques for the wages and entitlements in the Notice via its solicitors. Adhering to a Compliance Notice is not an admission of liability under the Fair Work Act and those who do comply are not deemed to have contravened the Act.

Arrangements have been made for the money to be paid to the former employees, including the former kitchen hand, who has since returned to Italy.

Ms James says a pattern of behaviour by the restaurant now means it has been targeted for ongoing education and compliance monitoring.

The Fair Work Ombudsman issued almost 120 Compliance Notices last financial year and commenced legal proceedings in several cases where they were ignored.

A number of other high-profile Sydney CBD restaurants are also being monitored by the Agency’s Overseas Worker’s Team following intelligence that some are paying flat hourly rates to overseas workers below minimum Award entitlements.

“We treat the underpayment of visa-holders particularly seriously, because they can be vulnerable if they are not fully aware of their workplace rights or are reluctant to complain,” Ms James said.

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

Sign up to receive the Fair Work Ombudsman’s media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases) .

Media inquiries:

Nicci de Ryk, Senior Media Adviser

Mobile: 0466 522 004

nicci.deryk@fwo.gov.au (<mailto:nicci.deryk@fwo.gov.au>)

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.