

Business with “no idea” about minimum pay rates now faces \$46,000 unpaid wages bill

19 August 2015

The operator of a take-away food outlet in Melbourne who underpaid his staff over \$46,000 admitted having no idea about minimum wage rates.

He was paying his employees mutually-agreed flat rates of \$17 an hour, when they should have been getting at least \$18.52 an hour under the Fast Food Industry Award.

Eighteen current and former employees of Mr Kitchen Box Hill were short-changed between December, 2013 and January this year.

The underpayments were identified during an investigation by the Fair Work Ombudsman following a request for assistance from a former employee.

The largest individual underpayments were \$13,584 and \$12,071.

International students from Taiwan and China were among those who were short-changed.

The business, located in the food court at the Box Hill Central Shopping Centre, is run by Chinese nationals through their company DM&G Pty Ltd.

Fair Work Ombudsman Natalie James says Fair Work inspectors do not believe the underpayments were deliberate, but rather the result of the employers' ignorance of workplace laws.

Ms James says DM&G has co-operated with the Agency and expressed a strong desire to ensure it fully complies with its workplace obligations in future.

It has signed an Enforceable Undertaking (EU) with the Fair Work Ombudsman, which Ms James says is focussed on ensuring ongoing behavioural change.

A second My Kitchen take-away food outlet has also signed a workplace pact with the Fair Work Ombudsman after it came to the Agency's attention during investigations into DM&G.

Xin Long Pty Ltd, trading as Mr Kitchen The Pines, at Doncaster, admitted paying a flat hourly rate of \$20, not paying annual leave entitlements, keeping limited time-and-wage records and failing to issue pay-slips to employees.

The company, also run by Taiwanese nationals, had no understanding of its obligations under Commonwealth workplace laws.

It has agreed to conduct a self-audit of its cash-in-hand payments to staff from July last year to the end of June this year and immediately rectify any underpayment of wages and entitlements.

Xin Long will also be required to engage an independent expert in 12 months to audit its compliance with workplace laws and report back to the Fair Work Ombudsman on the findings.

Both businesses are being required to undertake workplace relations training and register with the Fair Work Ombudsman's online tool My Account.

Ms James says Fair Work inspectors are increasingly finding employers from non-English speaking backgrounds who have no understanding of their workplace obligations or the seriousness of their non-compliant behaviour.

Earlier this month, the Fair Work Ombudsman announced it had signed an EU with a Malaysian restaurant in Perth which had been short-changing international students and a 417 working holiday visa-holder, paying them as little as \$15 an hour.

Restaurant director Soon Huat Koh told Fair Work inspectors he was unaware of Australia's minimum pay rates or the Restaurant Industry Award 2010.

Mr Koh was also failing to issue pay slips, for which he received an \$850 on-the-spot fine.

A Taiwan-based company trading as 85c Bakery café in Sydney was recently found to be paying its staff as little as \$12 an hour after consulting friends and business associates to determine a “market rate”.

In Hobart, restaurant Written on Tea was paying its workers as little as \$11 or \$12 an hour depending on their English proficiency and experience.

And the operator of restaurant 678 Korean BBQ in the Sydney CBD told Fair Work inspectors flat hourly rates of \$12 to \$16 an hour were “normal” wages paid by Korean restaurants in the City.

In June, the Federal Circuit Court fined Melbourne-based Grand City (GW) Travel & Tour Pty Ltd and director Na Xu a total of \$228,000 for underpaying a young Chinese employee who spoke limited English. During the Fair Work Ombudsman’s investigation, Xu rebuked Australia’s minimum pay rate, stating that it was “just crazy”.

Ms James says the Fair Work Ombudsman is working hard to build a culture of compliance with workplace laws in Australia by providing practical advice that is easy to access, understand and apply.

She says it is important that there be a fair, competitive environment for employers who are doing the right thing by creating a level playing field in relation to business costs.

“Anyone establishing operating a business, including migrants, need to ensure they take the time to understand our workplace laws applicable to their business,” Ms James said.

“Migrant employers simply cannot undercut the minimum lawful entitlements of their employees based on what they think the job may be worth, what the employee is happy to accept, what other businesses are paying, or what the job may pay in their country of origin.”

Last week, the Fair Work Ombudsman announced a new program aimed at developing relationships with multicultural communities.

The purpose is to ensure migrant employers and workers are aware of their rights and responsibilities under Australian workplace laws.

“The use of Community Engagement Officers is in addition to our Overseas Worker’s Team established in July, 2012 and they have been selected for their ability to work sensitively with multi-cultural groups and have been trained in techniques that will assist them to establish meaningful ongoing relationships,” Ms James said.

“Through consultation with community legal and migrant resource centres, ethnic community networks and international student organisations, the Fair Work Ombudsman can determine how to best assist migrant and international student groups.

“By delivering presentations, workshops and webinars and through discussion groups, meetings and our participation in community events we gain a better understanding of the needs of these communities and can then tailor resources and programs accordingly. Through this process we’ll also be educating people on the role of the Fair Work Ombudsman.”

Ms James encouraged employers who had any uncertainty about whether their workplace practices were appropriate to visit www.fairwork.gov.au or call the call the Fair Work Infoline on 13 13 94 for advice.

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