

Sushi bar reimburses Korean backpacker, revamps workplace practices after \$5000 underpayment

11 February 2015

The operator of a sushi bar paid her staff a “market rate” after doing a ring-around of her competitors to find out what they were paying their employees.

Unfortunately for Sydney businesswoman Joo Young Ju, her flat rate of less than \$16.50 an hour prompted one of her workers to complain to the Fair Work Ombudsman.

Under the Fast Food Industry Award 2010, the employee was entitled to \$17.98 an hour for normal hours and penalty rates of up to \$39.57 an hour for weekend, overtime and evening work.

The 26-year-old South Korean backpacker, in Australia on a 417 working holiday visa, was subsequently underpaid more than \$5000 for just 11 weeks’ full-time work.

Ms Ju, who recruited the staff member via the Korean community website hojunara.com, agreed to fully back-pay the employee in a workplace pact she has signed with the Fair Work Ombudsman.

Her company Fine Food Gallery Pty Ltd operates Sushi Izu franchise outlets inside Woolworths supermarkets at Double Bay and at Town Hall in the Sydney CBD.

As well as short-changing the backpacker between December, 2013 and February last year, Ms Ju underpaid his annual leave entitlements.

However, given Fine Food Gallery has no prior complaints history and Ms Ju co-operated fully with Fair Work inspectors, an Enforceable Undertaking was offered as an alternative to litigation.

The company has given a commitment to ensure future compliance with its workplace obligations under Commonwealth laws.

It will undertake workplace relations training, self-auditing of employee wages and entitlements and register with the Fair Work Ombudsman’s online self-help tool My Account.

The company also agreed to display workplace notices detailing its contraventions and make a written apology to the affected former worker.

Fair Work Ombudsman Natalie James says it should also be of concern to Woolworths to learn that employees working on its premises were being paid below lawful minimum entitlements.

She noted that Fine Food Gallery employees prepare, pack and display Sushi Izu- branded sushi for their own display fridges, but also for Woolworths fresh food display fridges.

Customers select their sushi and pay at the Woolworths cash registers.

Ms James reminded Woolworths that Section 550 of the Fair Work Act provides for accessorial liability - a mechanism through which someone other than the employer who is involved in a contravention of workplace laws may be held accountable.

In a keynote address late last year titled “Risk, Reputation and Responsibility”, Ms James flagged that she would increasingly use Section 550 to go up and down the supply chain to scrutinise sub-contracting arrangements.

She warned that companies found to be profiting from underpaying workers faced a “very real risk to reputation and impact on their bottom line”.

Ms James says all parties should undertake due diligence when outsourcing work, particularly to lowest-cost providers, to ensure lower costs are attributable to efficiencies in the business and not the potential exploitation of workers on below-award rates.

Supermarket giant Coles became the first major chain to publicly declare last year it had an “ethical and moral responsibility” to join with the Fair Work Ombudsman and stamp out exploitation of vulnerable trolley collectors.

Coles gave an undertaking to the Fair Work Ombudsman in October that it would revamp its trolley collection services, admitting its former practices were highly vulnerable to exploitation and poor employment practices, including underpayment of wages.

Coles further acknowledged that:

- It is responsible for compliance with all aspects of the law across its business operations, and
- It has an ethical and moral responsibility to ensure all entities and individuals directly involved in the conduct of its business comply with the law and meet community and social expectations to provide equal, fair and safe work opportunities.

Ms James said the Fair Work Ombudsman was now receiving more complaints from visa holders working in Australia than ever before.

Between 2011-12 and 2013-14, complaints from 417 working holiday visa-holders to the Fair Work Ombudsman increased by 382 per cent from 216 to 1042.

In August, Ms James announced a year-long review of the wages and conditions of 417 backpackers who do 88 days' work in regional areas in order to obtain a second visa.

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

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages.

Overseas workers can call 13 14 50 if they need interpreter services.

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 .

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Fine Food Gallery Pty Ltd EU (PDF 1.1MB) (www.fairwork.gov.au/ArticleDocuments/837/fine-food-gallery-pty-ltd-eu.pdf.aspx)
(DOCX 166KB) (www.fairwork.gov.au/ArticleDocuments/837/fine-food-gallery-pty-ltd-eu-final.docx.aspx)

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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

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