

Malaysian husband-and-wife chef, kitchen hand, allegedly short-changed more than \$63,000

10 November 2015

The former operators of a Tasmanian resort will face Court for allegedly underpaying two Malaysian visa-holders more than \$63,000.

The Fair Work Ombudsman has commenced legal proceedings against Sydney man Chang Yen Chang and his private company Yenida Pty Ltd.

Mr Chang owned and operated the Scamander Beach Resort Hotel on Tasmania's east coast until last year.

Documents filed with the Federal Circuit Court in Hobart allege Mr Chang and his company breached the racial discrimination provisions of the Fair Work Act.

Mr Chang allegedly advertised in a Malaysian newspaper in 2007 for a chef to work at the hotel's restaurant. Yenida subsequently sponsored a Malaysian national on a 457 skilled worker visa.

His wife accompanied him on a spousal visa. She was also employed at the restaurant as a kitchen hand for about four months.

The man was allegedly required to work six days a week, starting each day when the restaurant opened for lunch and finishing after it closed for dinner.

While he was paid an annual salary of up to \$46,280, it was allegedly not enough to cover applicable penalty rates for night, weekend and overtime shifts.

He was allegedly short-changed a total of \$52,928 between 2010 and 2014.

His wife was allegedly required to work the same hours and was paid a flat rate of between \$446 and \$594 a week.

She was allegedly underpaid \$10,406 between September, 2009 and January, 2010.

In contrast to its treatment of the Malaysian couple, Mr Chang and Yenida paid their Australian employees their minimum hourly rates, penalty rates and loadings largely in accordance with the Hospitality Industry (General) Award.

However, Fair Work inspectors found that an incorrect application and non-application of some provisions allegedly resulted in 15 Australian employees being underpaid a total of \$26,566.

Fair Work Ombudsman Natalie James says the Agency has taken legal action because of the serious nature of the alleged contraventions.

"We allege that Mr Chang and his company knew that all staff were lawfully entitled to minimum Award pay rates but chose to pay the Malaysian couple significantly less than Australian staff because of their race, which is completely unacceptable," she said.

"Overseas workers in Australia have the same rights and entitlements as Australian workers and must be paid according to Australian workplace laws.

"We treat underpayment of overseas workers and contraventions of their workplace rights very seriously because we know they can be vulnerable if they are reluctant to complain or are not fully aware of their rights."

The Fair Work Ombudsman alleges Mr Chang and his company committed several contraventions of workplace laws.

Yenida Pty Ltd faces maximum penalties of up to \$51,000 per contravention and Mr Chang faces penalties of up to \$10,200 per contravention.

The Fair Work Ombudsman is also seeking a Court Order for Mr Chang's company to back-pay the former employees in full.

Under the Fair Work Act, it is unlawful to discriminate against employees on the grounds of pregnancy, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer responsibilities, religion, political opinion, national extraction or social origin.

Since 2009, the Fair Work Ombudsman has received dozens of requests for assistance relating to alleged racial discrimination in the workplace.

Pregnancy, disability and age discrimination are the most common types of complaints, along with discrimination on the grounds of family and carer's responsibilities.

Requests for assistance from employees in relation to alleged discrimination in the workplace can have a range of outcomes, including inspectors assisting the employer to take voluntary action to resolve the issue to the satisfaction of the relevant employee, inspectors determining the allegation is not sustained or the matter being handled by another body.

The Fair Work Ombudsman also has the power to take enforcement action if there is sufficient evidence and it is in the public interest.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

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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