

## Court sends strong message to café operators who underpaid overseas workers

4 August 2016

A mother-and-son business team which deliberately exploited vulnerable overseas workers has been penalised almost \$200,000 and ordered to back-pay former staff tens of thousands of dollars.

Café owner-operators A-Hsueh Lai and Chang Ming Liu short-changed five female staff from Taiwan, Hong Kong and Korea more than \$54,000.

Paid as little as \$10 an hour, the former visa-holders were underpaid amounts ranging from \$8300 to more than \$18,000 when they worked at the Japanese Sakuraya café in the Brisbane suburb of Eight Mile Plains between 2013 and 2014.

Following an investigation and legal action by the Fair Work Ombudsman, the café operators have now been penalised a total of \$196,000.

Lai and Liu have each been penalised \$28,000 and their company, Sakuraya Warrigal Pty Ltd, has been penalised a further \$140,000, including record-keeping penalties.

Judge Salvatore Vasta has also ordered that they fully rectify outstanding wages and entitlements of \$54,594 (plus interest) owing to their former staff.

Further, Judge Vasta instructed that costs of more than \$12,000 be paid to the Fair Work Ombudsman towards the cost of flying witnesses from overseas to Brisbane for the litigation.

This is the first successful costs Order sought by the Fair Work Ombudsman in relation to international witness travel for a trial that did not proceed.

Under the Fast Food Industry Award, the casual employees were entitled to receive more than \$18 for ordinary hours and penalty rates ranging from \$21 to \$50 for weekend, weeknight and public holiday work.

The Court heard that the employees, whose main duties included making specialty teas, were often promised higher pay rates if they passed "tea-making tests" set by their employer - only to have their wages docked for the cost of the drinks made when they were deemed to have failed.

Fair Work Ombudsman Natalie James says the Agency took legal action because of the employer's refusal to rectify the back-payments and because Liu had previously been apprised of his workplace obligations following complaints from other employees of an associated entity of the business dating back to 2012.

After their late admissions, Lai and Liu made a series of submissions in Court about why they believed they should receive only a fraction of the applicable maximum penalties.

These included that as Taiwanese nationals, English was their second language and they did not fully understand their obligations to employees in Australia.

They also asserted that the employees never complained about being paid \$10 an hour and that their accountant had failed to advise them of their record-keeping and pay-slip obligations.

Further, Lai and Liu indicated they felt "insulted" that for the purposes of determining Award coverage, their cafes had been classified as fast-food outlets and not restaurants.

They also claimed they had wanted to back-pay the employees, but did not have their bank details - and submitted that a large penalty was not appropriate because their small business had made losses over successive years.

Ms James says the penalty decision is a strong wake-up call to employers who think they can ignore their workplace obligations, noting that deliberate underpayment of employees is not tolerated by the Courts or the community.

She says the Agency went to considerable expense to pay for travel and accommodation for overseas witnesses and by imposing costs of over \$12,000 against the respondents, the Court recognised the unreasonable act of making admissions at the 11th-hour in circumstances where they knew the Agency would incur significant costs and no new evidence was submitted to prompt the late

admissions.

Ms James says a failure by vulnerable employees to complain about being underpaid is also no excuse for employers to continue to take advantage of staff, particularly when the employer has previously been apprised of its minimum wage responsibilities.

"I am increasingly concerned about the number of matters where visa-holders are being underpaid by culturally and linguistically diverse (CALD) business owners ... and while I understand there are cultural challenges and vastly different laws in other parts of the world, it is incumbent on all businesses operating in Australia to understand and apply Australian laws. To that end, the Fair Work Ombudsman is here to help with free advice and resources in a range of languages," she said.

Ms James says there is no "going rate" for overseas workers.

"Minimum wage rates apply to everyone in Australia - including visa-holders - and they are not negotiable," she said.

Ms James 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.

She says the Fair Work Ombudsman is also committed to improving compliance in the hospitality industry.

The Fair Work Ombudsman's three-year National Hospitality Industry Campaign, finalised earlier this year, resulted in more than \$582,000 being recovered for underpaid employees at take-away food outlets across Australia.

The Fair Work Ombudsman has a number of Inquiries underway to identify and address the structural and behavioural drivers of non-compliance in various industry networks and supply chains in which overseas workers are heavily represented.

These include a review of the wages and conditions of workers in Australia on the 417 working holiday visa and a Harvest Trail inquiry into the horticulture and viticulture sectors nationally.

The Fair Work Ombudsman recently released information about the work it conducted in calendar year 2015 involving visa-holders - view the [media release \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160510-visaholdersmr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160510-visaholdersmr) .

"Visa-holders can be vulnerable if they are not fully aware of their rights or are reluctant to seek help, so we place a high priority on taking action to ensure their rights are protected," Ms James said.

Employers and employees can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or phone the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available on the website.

The Agency also has fact sheets tailored to overseas workers and international students on the website and YouTube videos in 14 languages to assist workers to understand their workplace rights.

The Fair Work Ombudsman's Pay and Conditions Tool (PACT) provides advice about pay, shift, leave and redundancy entitlements.

Visit [www.calculate.fairwork.gov.au](http://www.calculate.fairwork.gov.au) (<http://www.calculate.fairwork.gov.au/>) to learn more.

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

Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

[ryan.pedler@fwo.gov.au](mailto:ryan.pedler@fwo.gov.au) (<mailto:ryan.pedler@fwo.gov.au>)

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://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.