

Sushi chain underpays migrant workers \$51,000

16 August 2016

A Gold Coast business which runs a sushi factory and allied restaurant and take-away food outlets in Queensland and NSW underpaid three Japanese employees more than \$51,000 over 18 months, an investigation by the Fair Work Ombudsman has found.

As a result, the company - Four Seasons Australia Pty Ltd - and its director, Young Hun Cha, face enforcement action from the Fair Work Ombudsman.

Four Seasons has a food preparation factory at Southport, restaurant Sushi 1 at Buranda Village and take-away outlets at Biggera Waters and Tweed Heads South.

Fair Work inspectors found that three Japanese nationals with limited English, including one 417 working holiday visa-holder, were short-changed when they worked for the company between April, 2014 and November, 2015.

Two of the workers were employed as kitchen attendants at the Buranda restaurant and short-changed \$26,206 and \$18,460 respectively.

They were paid a base rate of \$16.37 for all hours worked, including weekends, public holidays and overtime for work preparing and selling Japanese food.

Under the Restaurant Industry Award, they should have been paid at least \$16.80 per hour for ordinary hours initially, rising to \$17.79, and as much as \$44.48 per hour for public holiday work during the time the breaches took place.

The two workers were introduced to the roles by a non-English language information site established to assist Japanese, Korean, Chinese and Thai speakers seeking education information, share accommodation, job information and the location of flea-markets primary for non-English speakers.

The third employee was underpaid \$6551 while working in the Southport food factory preparing sushi products for sale in the company's outlets.

That worker received a flat rate of pay of \$13.50 for all hours worked and should have been paid at least \$17.29 and up to \$44.48 for public holiday hours under the Food, Beverage and Tobacco Manufacturing Award.

The Fair Work Ombudsman investigated the matters after receiving requests for assistance from two of the employees.

Given that Four Seasons had previous interactions with the Fair Work Ombudsman dating back to early 2010, the Agency has initiated enforcement action in the form of an Enforceable Undertaking (EU), aimed at encouraging behavioural change and future compliance with federal workplace laws.

The company and Mr Cha have apologised to the former employees and committed to reimbursing them all outstanding entitlements.

The EU requires the company to donate \$2000 to the Working Women's Centre in Queensland, undertake workplace relations training and conduct an independent auditor to assess its future compliance in 2016 and 2017.

Enforceable Undertakings were introduced by legislation in 2009 and the Fair Work Ombudsman has been using them to achieve strong outcomes against companies that breach workplace laws, without the need for civil court proceedings.

"We use Enforceable Undertakings where we have formed a view that a breach of the law has occurred, but where the employer has acknowledged this, accepted responsibility and agreed to co-operate and fix the problem," says Fair Work Ombudsman Natalie James.

In 2015-16, a total of \$3.85 million in underpaid wages and entitlements was returned to 2132 employees as a result of their employers entering into Enforceable Undertakings with the Fair Work Ombudsman.

This is up slightly on the \$3.75 million recovered for 2507 workers the previous year.

Ms James says the underpayment highlights the need for employers to ensure they are aware of the minimum hourly rates and penalty rates that apply to their staff, and pay them accordingly.

"Minimum rates apply to everyone – including visa-holders – and they are not negotiable," she says.

"Employers must ensure they meet all their workplace obligations, regardless of where and how they source their workers.

"It's not acceptable to pay a worker a 'going rate' or what you think the job is worth.




"I am increasingly concerned about the number of matters where visa-holders and vulnerable workers are being underpaid by culturally and linguistically diverse business owners.

"I understand there are cultural challenges and vastly different laws in other parts of the world, but 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."

Ms James encouraged employers who had any uncertainty to visit the Fair Work Ombudsman website at www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for advice.

An interpreter service is available by calling 13 14 50, and information on the website is translated into 27 languages.

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Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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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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