

Employer failed to check wage rates, underpaid employees almost \$50,000 in four months

17 August 2016

A Korean migrant who opened two take-away food outlets in Darwin late last year without checking the wages applicable to his business underpaid his workers almost \$50,000 in just four months.

A Fair Work Ombudsman investigation found that 21 employees were short-changed a total of \$48,600 when they worked at the two shops between December last year and April this year.

Many of the employees were overseas workers, including a Japanese backpacker on a 417 working holiday visa who initially alerted the Fair Work Ombudsman to the underpayments.

The largest underpayment of an individual worker was \$5800.

In two separate matters:

- A fast-food outlet at Parap has to back-pay one of its employees a total of \$32,500 after it was discovered she had been short-changed her minimum entitlements over two years, and
- A trolley services provider is being required to back-pay \$19,230 to a trolley collector who worked at Palmerston who was not paid his annual leave entitlement upon termination of his employment.

Fair Work Ombudsman Natalie James says the 21 workers underpaid almost \$50,000 will be reimbursed all outstanding wages and entitlements by June, 2017, under an agreed re-payment plan.

The workers were paid a flat hourly rate of \$18.99 for all hours worked.

Ms James says the employer told Fair Work inspectors he paid \$18.99 an hour to his full-time, part-time and casual employees following advice from the head office of the franchise under which the businesses operate.

Under the Fast Food Industry Award 2010, the minimum hourly rate for full-time and part-time employees was \$18.99 for the period the work was performed.

However, the rate should have risen to \$23.74 on Saturdays, \$28.49 on Sundays and \$47.48 on public holidays for full-time and part-time employees.

Casual employees should have received a minimum hourly rate of \$23.74, \$28.49 on Saturdays, \$33.24 on Sundays and \$52.23 on public holidays.

The employer also failed to meet its record-keeping and pay-slip obligations.

The owner told Fair Work Inspectors he did not question paying a flat hourly rate because he had never received penalty rates or overtime rates when he previously worked as an employee.

He has since engaged a book-keeper, obtained payroll software and is making use of the free tools and resources available to employers at www.fairwork.gov.au.

It is the second time in a matter of weeks that a Korean migrant employer opening a new business has ended up with a hefty bill for back-payment of wages after failing to check the rates applicable to the business.

In July, the Fair Work Ombudsman revealed details of a restaurant in Melbourne which has had to reimburse four former staff more than \$40,000 after paying flat rates as low as \$15 an hour.

Media release: [Restaurant failed to check wage rates and underpaid Korean, Japanese visa-holders \\$40,000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160728-doubleline-mr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160728-doubleline-mr)

Ms James says most underpayments are inadvertent and the result of employers failing to check their minimum obligations under workplace laws.

“While I understand there are cultural challenges and vastly different laws in other parts of the world, it is important for business

people operating here 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.

"When we find errors, our preference is to educate employers about their obligations and assist them to put processes in place to ensure the mistakes are not repeated," she says.

Employers who are concerned that they are not meeting their workplace obligations can visit www.fairwork.gov.au or phone the Fair Work Infoline on 13 13 94.

An interpreter service is available by calling 13 14 50.

Small businesses calling the Infoline can opt to receive priority service to assist with their inquiries

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/>) 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) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>).

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Media inquiries:

Eithne Johnston, Media Adviser

Mobile: 0439 835 855

eithne.johnston@fwo.gov.au (<mailto:eithne.johnston@fwo.gov.au>)

Page reference No: 6247

Contact us

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

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.