

Sydney Chinese restaurant enters pact to protect workers following \$80,000 wage underpayment

2 December 2016

Almost \$80,000 in unpaid wages and penalties has been returned to 22 workers at a Chinese seafood restaurant in Cabramatta, western Sydney.

Vinh Phat Chinese Seafood Restaurant, operated by Double Hats Pty Ltd, was found to be paying staff flat rates of pay as low as \$18 per hour for all work performed, including weekend work.

Double Hats had also not made or kept time records or part time hours agreements documenting the hours worked by the staff, largely of culturally and linguistically diverse backgrounds.

The underpayments and breaches of workplace law were detected when the restaurant business was audited as part of the Fair Work Ombudsman's NSW – Western Sydney Campaign last December.

Fair Work Ombudsman Natalie James said the employer had rectified the underpayments which amounted to \$79,817, and had entered an Enforceable Undertaking with the view to maintaining workplace compliance in future.

"We have seen a concerning number of employers from culturally and linguistically diverse backgrounds who have been in breach of workplace laws, particularly when they are employing workers from within their own communities," Ms James said.

"I want to make it clear to all employers that minimum wage rates and the issuing of pay slips and record keeping apply to everyone in Australia – including visa holders – and they are not negotiable.

"You cannot just pay the 'going rate' and should not presume that your previous experiences with employers you have worked for is how to run your own operation.

"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."

In August, the operators of Sydney Malaysian restaurant Mamak were penalised almost \$300,000 for paying staff as little as \$11 an hour (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/august-2016/20160819-mamak-penalty) based on what they determined was the going rate for that work.

Following the initial audit by Fair Work Inspectors, Double Hats undertook an assessment of underpayments over a 12 month period based on each employee's usual pattern of work.

The highest individual underpayment was for \$9504 to a food and beverage supervisor. The lowest amount, for a food and beverage attendant, was for \$390.

As part of the Enforceable Undertaking, Double Hats must engage an employment professional to complete annual audits for three years, take all reasonable steps to ensure future workplace compliance for the company and for it to register with the Fair Work Ombudsman's My Account.

Double Hats is also required to make a \$5000 donation to a local legal service and display a workplace notice of the contraventions and issue apology letters to workers translated into all relevant languages of employees.

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 or, like in this case, an EU can be more effective.

"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 and accepted responsibility and agreed to co-operate and fix the problem," Ms James says.

Last month, a Brisbane-based sushi restaurant chain entered an Enforceable Undertaking after it was found to have underpaid nine overseas workers more than \$123,000: [Sushi Go Round signs workplace pact after short-changing visa-holders \\$23,000 media release](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-) (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-

[2016/20160908-sushi-go-round-mr](#) .

In August, another sushi restaurant operation agreed to an Enforceable Undertaking as a result of the Fair Work Ombudsman's efforts to recover \$51,000 for three workers from a Gold Coast sushi restaurant business: [Sushi chain underpays migrant workers \\$51,000 media release \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/august-2016/20160816-fourseasonseupresser\)](#) .

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.

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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[Download the Double Hats Pty Ltd Enforceable Undertaking \(DOCX 146.8KB\)](http://www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-double-hats-pty-ltd.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-double-hats-pty-ltd.docx.aspx) (PDF 580.9KB) (www.fairwork.gov.au/ArticleDocuments/971/enforceable-undertaking-double-hats-pty-ltd.pdf.aspx)

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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.