

Japanese restaurant admits deliberately underpaying 417 visa-holders and hoping to get away with it

21 January 2016

The operators of a Japanese restaurant at Surfers Paradise have admitted they deliberately underpaid 16 casual employees tens of thousands of dollars.

The workers, many in Australia on 417 working holiday visas, were paid flat rates as low as \$10 an hour to work as kitchen hands and wait on tables.

Under the Restaurant Industry Award, they should have been paid at least \$21.09 for ordinary hours worked, up to \$25.31 on weekends and \$42.18 on public holidays.

Collectively, they were short-changed more than \$31,500 when they worked for the Uchouten Japanese Restaurant between December, 2013 and October, 2014.

Operators Chiiko Minagawa and Moon Yeom admitted the underpayments were intentional and the restaurant operated on the basis that it would not be caught.

The wage fraud was discovered by the Fair Work Ombudsman after one of the workers went to the Agency's Gold Coast office requesting assistance.

Fair Work Ombudsman Natalie James says the restaurant's admission that it deliberately exploited vulnerable overseas workers is seriously concerning.

Ms James announced that the business faces enforcement action and has been requested to sign an Enforceable Undertaking (EU).

The EU requires:

- Back-payment of all outstanding wages and entitlements,
- A public apology for the conduct be placed in the Gold Coast Bulletin newspaper,
- Registration with the Fair Work Ombudsman's Online tool My Account,
- Employment records be maintained and pay-slips issued to staff,
- A commitment to future compliance with federal workplace laws,
- Workplace relations training for managers with HR, payroll and recruitment functions, and
- The appointment of an external professional to audit the business's compliance with workplace laws by the end of November, 2016.

Ms James says the EU is focussed on encouraging behavioural change.

She says that Fair Work inspectors increasingly are finding employers from non-English speaking background who have little or no understanding of their workplace obligations – or worse, are ignoring them.

"Anyone running a business, including migrants, need to ensure they understand our workplace laws applicable to their business," she said.

"We will not tolerate the deliberate exploitation of overseas workers, and clearly when we look at the penalties being handed down by the Courts for this behaviour, they are also taking a very dim view of rogue employers.

"Migrant employers simply cannot undercut the minimum lawful entitlements of their employees based on what they think the job maybe worth, what the employee is happy to accept, what other businesses are paying or what the job may pay in their country of origin."

In November, the Federal Circuit Court imposed a \$73,000 penalty against the former owner-operators of a Darwin café who exploited two Taiwanese backpackers.

In his decision, Federal Judge Stewart Brown said: "In my view, backpackers and the like are particularly susceptible to being exploited by unscrupulous operators in the hospitality industry."

Judge Brown went on: "The Court has a responsibility to set penalties which will deter others from engaging in conduct which may

tarnish Australia's reputation as a satisfactory place for visitors and tourists to undertake a working holiday."

He concluded: "Employers in the hospitality industry need to know that they cannot exploit backpackers or other itinerant employees and expect that their behaviour, if detected by authorities, will not attract a significant penalty."

The Fair Work Ombudsman has a specialist Overseas Worker's Team, established in mid-2012, to help combat the exploitation of overseas workers in Australia.

Dedicated Young Worker's and Regional Services teams also focus on this vulnerable cohort, and recently community engagement officers were appointed to foster relationships with international student bodies and multi-cultural communities as well.

Visa-holders now represent about 11 per cent of the total number of employees seeking assistance from the Fair Work Ombudsman.

In 2014-15, the Agency recouped \$1.6 million for visa-holders and filed 20 matters in Court involving visa-holders.

The Fair Work Ombudsman is currently conducting a national review of the wages and conditions of overseas workers in Australia on the 417 working holiday visa.

Ms James encouraged employers who had any uncertainty about whether their workplace practices were appropriate to visit www.fairwork.gov.au or call the Small Business Helpline for advice on 13 13 94.

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>).

Sign up to receive the Fair Work Ombudsman's media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases).

Download:

- [Uchouten Pty Ltd - Enforceable Undertaking \(DOCX 168.9KB\) \(www.fairwork.gov.au/ArticleDocuments/884/enforceable-undertaking-uchouten-pty-ltd-redacted.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/884/enforceable-undertaking-uchouten-pty-ltd-redacted.docx.aspx) ([PDF 1.1MB\) \(www.fairwork.gov.au/ArticleDocuments/884/enforceable-undertaking-uchouten-pty-ltd-redacted.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/884/enforceable-undertaking-uchouten-pty-ltd-redacted.pdf.aspx)

Media inquiries:

Lara O'Toole, Media Adviser

Mobile: 0439 835 855

lara.otoole@fwo.gov.au (<mailto:lara.otoole@fwo.gov.au>)

Page reference No: 5736

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.