

Restaurant failed to check wage rates and underpaid Korean, Japanese visa-holders \$40,000

28 July 2016

A Korean migrant who opened a restaurant in Melbourne last year without checking the wages applicable to his business has now been required to back-pay more than \$40,000 to four of his former staff.

Businessman Kevin Pak paid four overseas backpackers – one from Korea and three from Japan – flat rates of \$15 and \$16 to work as kitchen hands and food and beverage attendants at his Russell St restaurant in the CBD.

The restaurant, formerly known as Menya San Dame, but now trading as Shujinko, is open 24 hours a day, seven days a week.

A Fair Work Ombudsman investigation found that four former employees – who were in Australia on 417 working holiday visas – were short-changed when they worked at the restaurant between June last year and January this year.

The former employees, aged between 23 and 30, often worked long hours, and on one occasion one worked 7-days a week for two consecutive weeks.

Two employees worked from 9 pm to 9 am.

Their duties included serving customers, taking orders, seating customers, cleaning, assisting with the preparation of and cooking of meals.

The workers, who spoke limited English and required the services of an interpreter, were underpaid \$14,854, \$10,444, \$8790 and \$5955 respectively.

They turned to the Fair Work Ombudsman for help after being told the restaurant was to close briefly for refurbishing and rebranding and were encouraged to look for work elsewhere.

Under the Restaurant Industry Award they should have been paid at least \$21.09 to \$22.24 an hour for ordinary hours and penalties of between \$25.31 and \$44.48 for weekends, shift work and public holidays.

Mr Pak, a director of Double Nine Pty Ltd, the company which operates the business, told the Fair Work Ombudsman he was unaware of his workplace obligations as an employer.

He has expressed “sincere regret” for the underpayments, apologised for the conduct and co-operated with Fair Work inspectors to voluntarily rectify all outstanding entitlements.

In addition, Mr Pak has signed an Enforceable Undertaking (EU) with the Fair Work Ombudsman aimed at encouraging behavioural change and future compliance with federal workplace laws.

“Overseas workers are often vulnerable because of a lack of awareness of their workplace rights and language barriers, so we place a high priority on ensuring their workplace rights are protected,” says Fair Work Ombudsman Natalie James.

“Successful compliance outcomes such as this also help to ensure a level playing field for employers who are doing the right thing and complying with their obligations.”

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 and accepted responsibility and agreed to co-operate and fix the problem,” Ms James said.

Mr Pak is back-paying his former staff under a repayment plan which will ensure all outstanding wages and entitlements are reimbursed by the end of September.

The EU also requires Double Nine to:

- Take all reasonable steps to ensure future workplace compliance,
- Place a public notice in The Age newspaper outlining the contraventions and actions taken,
- Undergo workplace relations training,

- Register with the Fair Work Ombudsman's online My Account tool,
- Implement and show evidence of systems and processes to ensure future compliance, Provide the Fair Work Information Statement (FWIS) to all new employees in their first language, and
- Engage an external independent professional to audit the company's compliance with workplace laws for 2016 and 2017.

The Fair Work Ombudsman is increasingly finding cases of employers from non-English speaking backgrounds not understanding their workplace obligations or appreciating the seriousness of failing to comply.

Ms James says there is no "going rate" for Korean employees or indeed employees of any other nationality.

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

"Anyone operating a business, including migrants, needs to ensure they take the time to understand the workplace laws applicable to their business," she said.

Ms James says the Agency is working hard to build a culture of compliance with workplace laws in Australia by providing practical advice that is easy to access, understand and apply.

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 - see [Fruit picking backpackers most likely to dispute pay \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160510-visaholdersmr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/may-2016/20160510-visaholdersmr) .

Information to assist both employers and employees from non-English speaking backgrounds has been translated into 27 languages on the Fair Work Ombudsman website at www.fairwork.gov.au/languages (<http://www.fairwork.gov.au/languages>) .

Overseas workers or employers seeking assistance can call the Fair Work Infoline on 13 13 94 between 8 am and 5.30 pm weekdays to obtain free advice and assistance from a team of expert advisers.

A free interpreter service is also available on 13 14 50.

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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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