

Take-away food outlet allegedly used ‘internship’ program to exploit young Korean workers

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A take-away food outlet in regional NSW is to face Court for allegedly using an unlawful ‘internship’ program to exploit three young overseas workers.

The three females, aged 20 and 21 and who spoke little English, were allegedly underpaid more than \$51,000.

They came to Australia from Korea on 417 working holiday visas.

The Fair Work Ombudsman has commenced legal proceedings against Kjoo Pty Ltd, which operates the ‘Masaki’ sushi outlet in the food court at the Stockland Shellharbour Shopping Centre, south of Wollongong.

The outlet’s manager and part-owner, Hyo Jun “John” Kwon, is also facing legal action over his alleged central role in the underpayments.

So too is accountant Ok Gyu Lim, a director of accountancy firm Hanlim, for allegedly creating false pay records that were used to try to cover-up the extent of the underpayments.

The three workers had studied at a private Korean college called the Busan Institute of Science and Technology.

Two were recent graduates and one was studying a degree in hotel tourism management.

Mr Kwon and his company entered into a so-called ‘Internship Agreement’ with the college, which encouraged the three to travel to Australia for work experience.

They worked at the Masaki outlet between September, 2014 and July, 2015.

Each worked between four and six days each week, averaging more than 38 hours of work per week.

They were paid flat rates of between \$12 and \$13.50 for all hours worked.

The Fair Work Ombudsman alleges the three were entitled to receive the minimum rates applicable under the Fast Food Industry Award 2010.

The Agency alleges the purported internship agreement was not authorised under any Australian law or administrative arrangement and the work performed at Masaki was not a formal part of the workers’ college studies.

They should have been paid minimum hourly rates ranging from \$16.67 to \$18.99 per hour, plus casual loadings, and penalty rates ranging from \$23 to \$47 an hour for weekend and public holiday work.

Unlawful deductions were allegedly also made from the workers’ wages for accommodation.

Fair Work inspectors discovered the alleged underpayments after receiving requests for assistance lodged from the workers.

After the company received a Notice to Produce records, it is alleged Mr Lim, under instruction from Mr Kwon, created false pay records purporting to show the workers had been paid much higher wages than was actually the case.

Fair Work Ombudsman Natalie James says that while the company has now back-paid the workers in full, legal action is being taken because of the seriousness of the alleged conduct and significant amounts involved for young and vulnerable workers.

Kjoo Pty Ltd and Mr Kwon allegedly committed multiple contraventions of workplace laws and face maximum penalties of up to \$51,000 and \$10,200 per contravention. Mr Lim faces a maximum penalty of up to \$7200 for two alleged contravention of workplace laws.

The Fair Work Ombudsman is also seeking Court Orders requiring Kjoo and Mr Kwon to register with the My Account service at www.fairwork.gov.au and use the educational self-help tools for employers available.

A directions hearing is listed in the Federal Circuit Court in Sydney on July 1.

The case is the latest legal action following the Fair Work Ombudsman releasing a major research report into the issue of unpaid work in 2013, which found that growing numbers of Australian employers are using unpaid work schemes as an alternative to hiring paid

staff.

The Fair Work Ombudsman this week secured Court penalties totalling \$281,010 against media company AIMG BQ Pty Ltd and its director in a case involving exploitation of a Chinese international student through an unpaid internship.

Earlier this year the Fair Work Ombudsman secured a \$17,500 penalty against the former operator of a Melbourne marketing company over her involvement in the underpayment of three former interns (see: [Penalty for underpayment of interns \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/february-2016/20160216-aldred-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/february-2016/20160216-aldred-penalty)).

And last year, Melbourne company Crocmedia was fined \$24,000 for implementing an unpaid work arrangement that led to two young employees being underpaid thousands of dollars (see: [Company fined \\$24,000 over unpaid work scheme \(http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/january-2015/20150129-crocmedia-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/january-2015/20150129-crocmedia-penalty)).

The Fair Work Ombudsman has developed a range of resources – available at www.fairwork.gov.au/unpaidwork - for employers, employees and higher education institutions to promote a clear understanding in the community about what constitutes legitimate unpaid arrangements and vocational arrangements under the Fair Work Act.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

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Fair Work Online: www.fairwork.gov.au

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Need language help?

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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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