

Bing Boy franchisees sign workplace pact following underpayment of staff wages

11 March 2016

Two Taiwanese workers in Melbourne were short-changed thousands of dollars because they were wrongly employed as trainees, a Fair Work Ombudsman investigation has revealed.

The workers, including a backpacker in Australia on the 417 working holiday visa who spoke limited English, were underpaid a total of \$9466 when they worked at two Bing Boy Asian street food outlets.

The underpayment occurred primarily because the franchisees treated the workers as trainees and paid them a flat rate of just \$13 an hour for their first three months' work, despite never registering formal training agreements.

The franchisees told the Fair Work Ombudsman the "common" rate for Chinese restaurants was \$10 an hour and they thought \$13 an hour was "good pay" and that employees would be happy to work there.

They subsequently increased the rate to \$19 an hour after the so-called training period.

However, the Bing Boy franchisees, Zhou Yang Emporium Pty Ltd and Zhou Yang Northland Pty Ltd, should have been paying the casual employees a minimum of \$23.15 an hour.

Under the Fast Food Award, the two employees were also entitled to \$27.78 an hour on Saturdays, \$32.41 on Sundays and \$50.93 on public holidays.

The 417 visa-holder was underpaid \$3953 between February 18 and June 30 last year while working at Bing Boy at Northland Shopping Centre.

The second worker was underpaid \$5513 between November 7, 2014, and June 30, 2015, while employed at the Emporium Bing Boy outlet in the Melbourne CBD.

The Fair Work Ombudsman has taken enforcement action against the two franchisees in a bid to encourage behavioural change and future compliance with federal workplace laws.

Fair Work Ombudsman Natalie James says it is important that employers operate in a fair and competitive environment underpinned by a level playing field when it comes to business costs.

"Employers simply cannot undercut the minimum lawful entitlements of their employees based on what they think the job may be worth, what the employee is happy to accept, what other businesses are paying, or what the job may pay in the employer's or employee's country of origin," Ms James said.

"Anyone establishing or operating a business needs to ensure they take the time to understand our workplace laws applicable to their business."

Ms James says putting employees on flat hourly rates does not relieve employers of their obligation to comply with all minimum Award entitlements applicable to their workplace.

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

As part of Enforceable Undertakings the Bing Boy operators have signed, they have agreed to:

- Implement systems and processes to ensure future compliance with workplace laws;
- Engage an external accounting professional to audit workplace practices;
- Provide workplace relations training;
- Register with the Fair Work Ombudsman's online tool MyAccount and demonstrate the ability to determine employee entitlements;
- Provide the Fair Work Ombudsman a copy of time and wage records for the employees for the first full pay period following the EUs' execution;
- Place a notice in the workplace and media about the contraventions and employer actions.

Ms James encouraged employers who had any uncertainty about whether their workplace practices were appropriate to visit the Fair

Work Ombudsman website at www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for advice.

An interpreter service is available by calling 13 14 50, and information on the website is translated into 27 languages.

Ms James says the Fair Work Ombudsman's Overseas Worker's Team (OWT) was established in mid-2012 in recognition that overseas workers can be vulnerable to exploitation or require special assistance.

The Fair Work Ombudsman is now receiving more requests for assistance from overseas visa-holders working in Australia than ever before.

Almost 12 per cent of all requests for assistance lodged with the Agency last financial year came from visa-holders.

Information for employers about hiring apprentices and trainees can be found at <https://www.fairwork.gov.au/find-help-for/apprentices-and-trainees>

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Fair Work Online: www.fairwork.gov.au

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Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

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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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