

Half-a-million dollar top-up for pay packets of hundreds of take-away food workers

30 March 2016

Workers in take-away food outlets across Australia have been underpaid hundreds of thousands of dollars, spot checks by the Fair Work Ombudsman have revealed.

A total of 223 businesses were found to have short-changed 929 employees a total of \$582,410, Acting Fair Work Ombudsman Michael Campbell announced today.

One business owed its employees more than \$35,000.

The underpayments were identified during the third and final wave of the Fair Work Ombudsman's three-year National Hospitality Industry Campaign.

A total of 565 take-away food businesses were asked to supply time and wages records for assessment.

Just over half - 53 per cent - were paying their employees correctly, with just 33 per cent found to be fully compliant with all payslip and record keeping obligations.

Releasing the findings today, Mr Campbell called for leadership from the take-away food industry to dramatically improve its compliance with workplace laws.

Mr Campbell says the results highlight the need for behavioural change and signalled that the hospitality sector would remain a "priority" industry earmarked for ongoing education and support.

He says encouraging compliance is not a job for the Fair Work Ombudsman alone, and called on industry leaders to help with the heavy lifting.

"The Fair Work Ombudsman is striving to build a culture of compliance where businesses understand and comply with their lawful obligations and do not inadvertently or deliberately undercut their competitors by paying black market wage rates," he said.

"Clearly, the take-away food sector, an industry comprised largely of small businesses, is grappling with the complexity of the IR system and few it seems are joining industry bodies to seek professional help and advice.

"It is important that major players in the hospitality sector, industry groups and intermediaries such as accountants and lawyers, all play their part to help lift the levels of compliance above what we are seeing now."

State-based recoveries were:

- \$154,609 for 269 employees in Victoria,
- \$132,433 for 218 employees in Queensland,
- \$99,527 for 140 employees in South Australia,
- \$84,517 for 120 employees in NSW,
- \$32,076 for 41 employees in the Northern Territory,
- \$30,245 for 54 employees in Western Australia,
- \$26,305 for 60 employees in Tasmania, and
- \$22,698 for 27 employees in the ACT.

Mr Campbell says six businesses received formal Letters of Caution putting them on notice about the need for future compliance with their workplace obligations.

The hospitality sector was targeted for attention over three years from 2012-15 in response to more than 4500 requests for assistance from employees in 2010-11, a high volume of calls to the Fair Work Infoline and a number of litigations against hospitality businesses for breaches of workplace laws.

The Fair Work Ombudsman's 2014-15 annual report reveals that hospitality continues to generate high numbers of calls to the Fair Work Infoline and accommodation and food services accounts for the highest number of requests for assistance from employees.

The Fair Work Ombudsman has Memorandums of Understanding (MoUs) with key industry bodies the Accommodation Association of

Australia (AAoA), the Australian Hotels Association (AHA) and the Restaurant and Catering Association (RCA).

More than 7500 take-away food businesses were contacted by the Fair Work Ombudsman in advance of the final wave of the campaign.

Major stakeholders were also notified, including RCA, United Voice, the Franchise Council of Australia, the Shop Distributive and Allied Employees Association and the Australian Industry Group.

Mr Campbell says the most common wage error identified was the underpayment of minimum hourly rates.

“Inspectors found some employers providing flat rates of pay for all hours worked, with many advising they had adopted this practice to simplify their payroll processes,” he said.

“In nearly one-third of cases, the hourly rate paid was not enough to cover hours attracting penalty rates and loadings, resulting in additional errors.”

A number of businesses were also inadvertently paying their staff under the Restaurant Industry Award instead of the Fast Food Industry Award because the business provided both take-away and dine-in services.

Mr Campbell says Agency officials will continue to provide ongoing education and support to the hospitality sector to encourage and improve compliance levels. This will include presentations and information sessions for key stakeholder groups.

Businesses found to be non-compliant during the three waves of the campaign may also be included in a new National Compliance Monitoring Campaign, targeting employers who have previously been found with contraventions.

Mr Campbell said the Fair Work Ombudsman was committed to helping employers to understand and comply with workplace laws, but operators also needed to make an effort to get the basics right in the first place.

He urged hospitality businesses to use the online tools and resources available to them free of charge at www.fairwork.gov.au/hospitality

Mr Campbell also urged small businesses to consider joining a professional industry body, such as the Council of Small Business of Australia (COSBOA).

“We find that employers that are well advised, especially members of registered organisations, are far less likely to be the subject of a complaint to us,” he said.

COSBOA Chief Executive officer Peter Strong agreed that businesses who are members of a relevant industry body are less likely to encounter trouble.

“Business people in this sector should know there is help available, including from the FWO who would rather inform and help businesses resolve issues cooperatively, than take them to court,” Mr Strong said.

“COSBOA also stands ready to assist those who need it and we work with the Fair Work Ombudsman to create a level playing field for everyone.

“Industry associations such as the Restaurant & Catering Association or National Retailers’ Association can also provide relevant, tailored assistance for some fast food businesses, as might local or State Chambers of Commerce.

Mr Strong said: “The contravention rate highlights several issues, particularly the need to assist businesses in understanding the workplace relations system.”

“Most small employers are not experts on workplace relations and are often more focused on having a good business with happy and well performing employees than their compliance obligations,” he said.

“These businesses often employ vulnerable people such as young workers or people from culturally and linguistically diverse backgrounds.”

The Fair Work Ombudsman’s website www.fairwork.gov.au provides an easy-to-access portal to a wide range of free information aimed at helping both employers and employees understand their respective rights and obligations.

The recently-launched mobile-friendly Pay and Conditions Tool (PACT) can assist business owners to calculate the correct pay for their employees and a series of Best Practice Guides is available on a range of topics, including “Small Business and the Fair Work Act”.

Small business callers can receive priority service when they call the Fair Work Infoline on 13 13 94 between 8 am and 5.30 pm weekdays. A free interpreter service is also available by calling 13 14 50.

Small business operators can also tap in to the suite of easy-to-follow courses at the Fair Work Ombudsman Online Learning Centre.

Download:

Hospitality (wave 3 - takeaway foods) campaign report (DOCX 2MB) (www.fairwork.gov.au/ArticleDocuments/714/hospitality-campaign-wave-3-takeaway-foods-report.docx.aspx) (PDF 1.3MB) (www.fairwork.gov.au/ArticleDocuments/714/hospitality-campaign-wave-3-takeaway-foods-report.pdf.aspx)

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