

Fast food operator faces court for allegedly underpaying overseas workers \$18,000

13 September 2016

A fast food operator in Brisbane is facing Court for allegedly short-changing two overseas workers more than \$18,000 - despite previously being put on notice to pay staff correctly.

The Fair Work Ombudsman has commenced legal action against WY Pty Ltd, which formerly operated two 'Hanaichi Japanese Fine Food' outlets at the Chermside shopping centre.

It currently operates one outlet at Indooroopilly.

Also facing Court is WY Pty Ltd director and part-owner Chong Yew Chua and the company's former internal payroll and account manager, Ning Yuan Fu.

It is alleged that two workers - a man and woman from Taiwan aged in their 20s who speak limited English - were underpaid a total of \$18,491 while employed as kitchen hands at the Chermside outlets between February and August, 2015.

The two Taiwanese nationals were in Australia on 417 working holiday visas at the time and were employed after responding to advertisements on non-English language websites targeting Asian backpackers seeking work in Australia.

The Fair Work Ombudsman investigated after the workers lodged requests for assistance, and allegedly found they had been paid flat rates as low as \$15.60 an hour.

Under the Fast Food Industry Award, it is alleged that as casual employees they should have been paid between \$23.15 and \$23.74 for ordinary hours and penalty rates of between \$27.78 and \$28.49 for Saturday work and between \$50.93 and \$52.23 for public holiday work.

A special clothing allowance was also allegedly underpaid and unlawful deductions were allegedly made from their wages as 'bonds' for their uniforms.

In addition, the employees were allegedly not provided with a copy of the Fair Work Information Statement at the start of their employment.

Workplace laws relating to informing both employees about their classification and one employee about their status were also allegedly contravened.

Fair Work inspectors put Mr Chua and Mr Fu on notice to pay staff correctly in 2012 after finding staff were being underpaid at that time.

As a result, WY Pty Ltd reimbursed two employees more than \$400.

Fair Work Ombudsman Natalie James says the decision to litigate over the latest alleged contraventions follows concerns that the business operators have continued to deliberately recruit and underpay vulnerable overseas workers.

Mr Chua and Mr Fu face maximum penalties of up to \$10,800 per contravention and WY Pty Ltd faces penalties of up to \$54,000 per contravention. The Fair Work Ombudsman is also seeking Court Orders requiring WY Pty Ltd to include Fast Food Industry Award details and Fair Work Ombudsman contact information in all job advertisements it places in future, including on overseas websites – and to provide new employees with a copy of the Fair Work Information Statement (FWIS) in their language of choice.

A directions hearing is listed for September 26 in the Federal Circuit Court in Brisbane.

Last Friday, the Fair Work Ombudsman announced the results of legal proceedings in Victoria, where a former restaurant operator was penalised more than \$50,000 and criticised for his "morally moribund" and "calculated and deceitful" exploitation of a couple from India who were paid now wages for more than a year's work.

Read the media release: Restaurant operator penalised for "morally moribund" exploitation of Indian couple (www.fair-work.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160909-shaik-penalty) .

Delivering the decision, Judge Joshua Wilson said: "I accept without reservation that this case is a further, lamentable illustration of a prevalent phenomenon in the hospitality industry where employers exploit vulnerable workers by underpayment of salary entitlements and in other ways."

Earlier this month, the Fair Work Ombudsman announced that nine overseas workers employed by a sushi restaurant chain in Brisbane were short-changed more than \$123,000 over 16 months.

Read the media release: [Sushi Go Round signs workplace pact after short-changing visa-holders \\$123,000 \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160908-sushi-go-round-mr\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160908-sushi-go-round-mr) .

Ms James says the Fair Work Ombudsman treats underpayments of overseas workers particularly seriously. "Visa-holders can be vulnerable if they are not fully aware of their rights or are reluctant to seek help, so we place a high priority on taking action to ensure their rights are protected," she said. "Minimum wage rates apply to everyone in Australia – including visa-holders – and they are not negotiable.

"I am increasingly concerned about the number of matters where visa-holders are being underpaid by culturally and linguistically diverse (CALD) business owners ... and while I understand there are cultural challenges and vastly different laws in other parts of the world, it is incumbent on all businesses operating in Australia to understand and apply Australian laws. To that end, the Fair Work Ombudsman is here to help with free advice and resources in a range of languages."

Ms James says it is important that there be a fair, competitive environment for employers who are doing the right thing by creating a level playing field in relation to business costs.

She says the Fair Work Ombudsman is also committed to improving compliance in the hospitality industry.

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.

Earlier this year, the Fair Work Ombudsman released information about the work it conducted in calendar year 2015 involving visa-holders. Read the media release: [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) .

Employers and employees can visit www.fairwork.gov.au or phone the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50. Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available on the website. The Agency also has fact sheets tailored to overseas workers and international students on the website and YouTube videos in 14 languages to assist workers to understand their workplace rights.

NOTE: WY Pty Ltd sold the 'Hanaichi Japanese Fine Food' outlets at Chermiside in August, 2015 and the current operators of the outlets have no involvement in these proceedings.

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Fair Work Online: www.fairwork.gov.au

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Need language help?

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Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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