



## LawTalk Blog

# “Mother and son” café owners fined for underpaying workers

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Recently there has been a considerable amount of media attention on the exploitation of overseas workers and backpackers by Australian employers.

For most workers in Australia, their [minimum rates of pay](#) and conditions of employment are set in modern awards.

The office of the Fair Work Ombudsmen (FWO) is responsible for ensuring that employers comply with the law, including any applicable modern awards and, in appropriate cases, can prosecute employers who fail to do so.

The FWO is generally not interested in prosecuting employers who make genuine mistakes and who are generally law abiding and responsible. However, thankfully the FWO will pursue those employers who are recalcitrant or who “thumb their nose” at the award system and exploit vulnerable workers.

Recently the FWO prosecuted a mother and son who owned and operated a café and who, according to the FWO, had deliberately exploited vulnerable overseas workers.

The café owner operators had significantly underpaid five employees who had come to Australia from various Asian countries. They paid these workers \$10 an hour despite the fact that the relevant award – the Fast Food Industry Award 2010 – provided a minimum rate of \$18 per hour for ordinary hours of work and between \$21 and \$50 per hour for weekend and night work.

The employer in question had previously been investigated by the FWO after other workers had complained about the pay and conditions. Consequently, the employer was well aware of the terms of the relevant award, and of their obligations pursuant to that award.

When investigating the new complaints, the FWO gave the employer the opportunity to correct their error by back-paying the workers but the employer failed to do so. As a result the FWO elected to prosecute.

*"This case with total fines amounting to almost \$200,000.00, demonstrates the serious consequences that can follow if employers fail to comply with their legal obligations."*

The Court:

- ordered the café to pay the workers the amounts owed, which amounted to around \$54,000.00;
- ordered the café to pay the legal costs of the FWO amounting to over \$12,000.00;
- fined the café (the business) the sum of \$140,000.00 for breach of the award; and
- fined the two owner operators (personally) \$28,000.00 each.

This case with total fines amounting to almost \$200,000.00, demonstrates the serious consequences that can follow if employers fail to comply with their legal obligations.

Hopefully cases such as this will assist to educate employers and encourage them to follow the law and pay workers correctly. It is to be hoped that Australia's reputation as a desirable destination for backpackers and young tourists can be maintained if all employers take their legal obligations seriously.

If you have any questions about your legal entitlements as an employee Andersons Lawyers expert [employment and industrial relations](#) team can assist you. Please contact [Margaret Kaukas](#), Special Counsel, if you have any questions or require any advice or assistance.

You might also find the following article of interest:

- [Can my employer deduct money from my wages?](#)

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