



Australian Government

Fair Work OMBUDSMAN

NSW - Sydney Metropolitan Cleaning Contractors Campaign Final report June 2010

Summary

In June 2009, the Sydney office of the Fair Work Ombudsman (FWO) targeted employers, contractors and sub-contractors in the commercial building sector of the cleaning industry in metropolitan Sydney. We conducted this campaign as a pilot, in preparation for the National Cleaning Services Campaign to be conducted later in 2010.

We targeted the cleaning industry as we had received intelligence and a number of complaints indicating the likelihood of this industry's low compliance with workplace laws. The Building Service Contractors Association of Australia (BSCAA), the ACA Office Cleaning Services (NSW) and the Liquor, Hospitality and Miscellaneous Union (LHMU) also provided valuable intelligence.

Between 15 and 26 June 2009, Fair Work Inspectors conducted 17 night time site visits to commercial office buildings within the Sydney, North Sydney and Parramatta Central Business Districts. We provided educational information on site, and conducted 14 audits of time and wage keeping records, pay slip details, and wage payments.

Of the 14 audits undertaken, 12 (86%) businesses were found to be compliant, one was found to be in contravention, and one employer is still under investigation for alleged contraventions.

To date \$1277.00 has been recovered for 2 employees, and as a result of the ongoing investigation, we expect to recover a further \$40,347.00 for 28 employees.

Significantly, whilst the level of compliance was high (86%), this pilot campaign established several issues which we will attempt to address through our audit methodology in our National Cleaning Services Campaign. These issues include allegations of cash in hand payments, workers being reluctant to speak with Fair Work Inspectors (either because they are students on visas or they have been coached in their responses to inspectors), and the possibility of sham contracting.

The detailed findings are shown below.

Results

At 4 June, 2010, when the results of this campaign were compiled, we had achieved the following:

- Conducted 17 site visits to employers, contractors and sub-contractors in commercial buildings in the cleaning industry in metropolitan Sydney. Locations included Sydney, North Sydney and Parramatta Central Business Districts
- 3 businesses were unsuitable for audit, as they did not have any employees

- Of the 14 audits undertaken:
 - 12 (86%) businesses were compliant
 - 1 business was found to have both payslip and underpayment contraventions and as a result, \$1277.00 was recovered for 2 employees
 - 1 business is under investigation and has the following alleged contraventions:
 - Non-payment for hours worked
 - Incorrect accrual of annual leave
 - Incorrect accrual of personal leave
 - Non-payment of allowance for toilet cleaning
 - Non-payment of overtime rates
 - Non-payment of public holiday penalty rates
- \$40,347.00 is expected to be recovered for 28 employees

Campaign Outcomes	
Employers targeted for audit	17
Not suitable for audit (no employees)	3
Audits undertaken	14
• <i>Employers compliant (no contraventions)</i>	<i>12 (86%)</i>
• <i>Employer non compliant (both pay slip and monetary contraventions + \$1277.00 recovered for 2 employees)</i>	<i>1 (7%)</i>
• <i>Employer under investigation (6 alleged contraventions + \$40,347.00 expected to be recovered for 28 employees)</i>	<i>1 (7%)</i>

Generally, the results of this campaign indicate a high level of compliance in the commercial cleaning industry in metropolitan Sydney.

However, issues which we will take into consideration in designing the national campaign include:

- A practice whereby the employer allegedly paid the workers for 15 hours per week at the correct award rate. For a further five hours per week, the workers were allegedly paid cash-in-hand at a rate well below the correct pay rate. Accordingly, the pay records did not reveal any discernible contravention, as they did not include the cash-in-hand payments. It is difficult to determine whether this is a common practice in this industry and without evidence lead by employees, difficult to substantiate.
- A major difficulty was the significant number of overseas students working in the buildings and businesses audited. Many of these workers were reluctant to talk with us, some indicating that there may be a risk of jeopardising their Australian visas.
- A further issue was gaining access at night to the commercial buildings where the cleaners worked. We conducted the audit visits at this time in order to speak with the workers during their shifts, and generally gave notice to the

employers as we needed approval to access the premises. As a result, Fair Work Inspectors held concerns the employers appeared to have coached their cleaners in what to say to the inspectors. Certainly all Fair Work Inspectors reported the incidence of apparently scripted responses from the workers.

- Notwithstanding the pilot campaign did not uncover any instances or allegations of sham contracting, the FWO is keen to refine its methodologies and approaches to the sector in order to investigate allegations of sham contracting in this industry during the national campaign planned at the end of 2010.

Background

Intelligence received from Fair Work Inspectors and industry stakeholders combined with the volume of complaints received from the commercial cleaning industry indicated the likelihood of a low level of compliance with workplace laws. The number of complaints received between March 2006 and April 2010 for the *Building and other Cleaning Services category (ANZSIC 7311)* for NSW was 209 (24% of national total). Between July 2009 and April 2010, 21 complaints were received for NSW (39% of national total).

This pilot cleaning contractors campaign has provided valuable intelligence for the planning of the 2010 National Cleaning Services Campaign. It has also demonstrated an efficient use of resources, and the effective raising of employer awareness of workplace obligations and the role of the Fair Work Ombudsman.

Campaign aim and objectives

It was proposed that employers, contractors and sub-contractors in the commercial cleaning industry would be targeted for the following aims and objectives:

- To increase employers' awareness of the correct hourly rates of pay including weekend penalties, shift penalties, public holiday loadings and allowances under the *Workplace Relations Act 1996* [the Act] and relevant awards
- To ensure compliance with the requirements of the *Workplace Relations Regulations 2006* [the Regulations] in regards to the keeping of time and wage records and issuing of pay slips
- To provide information across the industry to assist employers to meet their obligations under federal legislation, including the lead up to the introduction of the *Fair Work Act 2009*, and to promote the role of the Fair Work Ombudsman (formerly the Workplace Ombudsman)
- To ensure the targeted employers comply with their minimum wage and entitlements obligations, including that the wage increase effective from the pay period commencing on or after 1 October 2008 has been passed on to employees
- To analyse the level of sham contracting that may exist in this industry

Methodology

We obtained our objectives by contacting key stakeholders to advise them of the purpose of the campaign, and to collect intelligence which would assist in the campaign methodology. We identified target businesses and contractors that fell within our audit parameters, and provided them with information on their workplace obligations, and on the introduction of the *Fair Work Act 2009*. From an analysis of employer records requested in our audit campaign letter, we determined which

buildings to target for site visits. We made night time site visits to commercial office buildings within the Sydney, North Sydney and Parramatta Central Business Districts, conducted the audits, evaluated the campaign and developed the final report.

Conclusion and Recommendations

This campaign received positive support from industry stakeholders. It was pleasing to see that the overall compliance of the businesses audited was high, and employers appeared to have a good understanding of workplace law requirements to pay the correct Award entitlements. However, this pilot campaign established several workplace issues which we will attempt to address in our National Cleaning Services Campaign.

As a result of the findings of this campaign, the Fair Work Ombudsman will:

- Continue to work in cooperation with employer associations to ensure compliance with Commonwealth workplace laws, with particular emphasis on the *Cleaning Services Award 2010* and the National Employment Standards
- Provide ongoing education to industry sector employees, with particular awareness of issues resulting from the high number of international students found to be working in the industry
- Finalise the outstanding audit from this campaign, and refer any compliance issues that emerge for consideration in the audit methodology of the *National Cleaning Services Campaign 2010*
- Research and further investigate issues which have emerged from this campaign, including cash in hand payments, prominence of overseas students working in the industry, and advance notification of employers of FWO site visits
- Research and further investigate a sample number of employers to determine the extent of sham contracting arrangements

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