



Australian Government

# Fair Work

## OMBUDSMAN

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### ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

JHH International Pty Ltd (ABN: 91 165 871 607)

and

Mr Jae Gi Jo

JGJ

YHH

Section 715 ENFORCEABLE UNDERTAKING

**Parties**

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
  - (a) JHH International Pty Ltd (ABN: 91 165 871 607) (**JHH International**); and
  - (b) Jae Gi Jofor the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**Commencement of Undertaking**

2. This Undertaking comes into effect when;
  - (a) the Undertaking is executed by JHH International and Jae Gi Jo; and
  - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, JHH International and Jae Gi Jo undertake to assume obligations set out below.

**Background**

4. JHH International was incorporated on 18 September 2013 and the business is engaged in providing cleaning services. Jae Gi Jo is the director of JHH International and is authorised to make decisions on behalf of JHH International.
5. TJS Services (FNQ) Pty Ltd (ABN: 85 135 566 666) entered into an agreement with JHH International to provide cleaning services at sites located in and around Cairns, Queensland on 24 October 2013.
6. In December 2014 the FWO commenced an investigation of JHH International following two requests for assistance made from employees of JHH International. These employees are set out in **Attachment A** to the Undertaking and will be referred to as Employee A and Employee B (**the Employees**).
7. JHH International employed Employee A between 17 August 2014 and 2 December 2014.
8. JHH International employed Employee B between 8 September 2014 and 15 November 2014.
9. The Employees performed cleaning duties.
10. The terms and conditions of the Employees' employment were governed by the FW Act and the *Cleaning Services Award 2010* (**the Modern Award**). The Employees were engaged as casual Cleaning Services Employee Level 1.
11. The Employees are Korean Nationals and each performed work under a working visa.

**Contraventions**

12. The FWO has determined, and JHH International admits, that JHH International has contravened section 45 of the FW Act by failing to comply with the following provisions in the Modern Award:
  - i. Subclause 16.1 by failing to pay adult employees the applicable hourly rate;
  - ii. Subclause 12.5(a) by failing to pay casual employees a casual loading;
  - iii. Subclause 27.1(a) by failing to pay the applicable afternoon shift loading;

- iv. Subclause 27.1(b) by failing to pay the applicable night shift loading;
  - v. Subclause 27.2(a) by failing to pay the applicable Saturday penalty rate;
  - vi. Subclause 27.2(b) by failing to pay the applicable Sunday penalty rate;
  - vii. Subclause 27.3 by failing to pay the applicable Public Holiday penalty rate; and
  - viii. Subclause 17.1 by failing to pay the applicable broken shift allowance.
13. As a result of contravening section 45 of the FW Act, an underpayment of \$16,216.74 (less taxation) was determined as owing to the Employees as outlined in **Attachment B**. JHH International has rectified all underpayments to the affected employees.

### **Undertakings**

14. For the purposes of section 715 of the FW Act, JHH International undertakes to:

#### *FWO My Account Registration*

- (a) Register with the FWO 'My Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and complete the profile, minimum pay rates and award options;
- (b) Within 14 days of the execution of this Undertaking, provide to the FWO the 'My Account' registration number.

#### *Future workplace Relations Compliance*

- (c) Ensure compliance at all times and in all respects with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the FW Act and the Modern Award, by developing systems and processes to ensure ongoing compliance with those requirements;

#### *Notices*

- (d) Place a public notice in the Saturday edition of The Cairns Weekend Post (**Public Notice**) within 28 days of the FWO publishing a Media Release on its website in respect of this Undertaking in the terms set out in **Attachment C**;
- (e) Provide a copy of the Public Notice within seven (7) days of publication;

#### *Broader community workplace relations education*

- (f) Make a donation of \$2,000.00 to Cleaning Accountability Framework Inc and provide proof of payment to the FWO within 21 days of the execution of the Undertaking with the objective of assisting the promotion of compliance with Commonwealth of Australia Workplace Relations Laws in the cleaning industry;

#### *Self-audits and Reporting*

- (g) Cause to have performed by an accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of JHH International), audits of JHH International's compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of all employees (including past employees) for each year as follows:
  - i. The Audit for the calendar years 2013 and 2014 is to be finalised within 60 days of the execution of this Undertaking;
  - ii. The Audit for the calendar year 2015 is to be finalised by 26 February 2016;
  - iii. The Audit for the calendar year 2016 is to be finalised by 24 February 2017;
  - iv. The Audit for the calendar year 2017 is to be finalised by 23 February 2018;

- (h) Provide to the FWO, at least 14 days prior to the commencement of an audit being undertaken, the methodology to be used for the purpose of the Audit for approval by the FWO;
- (i) Provide to the FWO within 14 days of each of the dates specified in subclause (g) above, details of the methodology used to conduct the Audit and the outcomes of the Audit;
- (j) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions and provide evidence of the rectification within 28 days of each of the dates specified in subclause (g) above, including rectification of any and all underpayments to employees;

*Workplace relations training*

- (k) Within 120 days of the execution of this Undertaking, organise and ensure training is provided to all persons who have managerial responsibility for human resource, recruitment or payroll functions (**Training**);
- (l) Ensure the Training relates to compliance with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Modern Award;
- (m) Ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by JHH International;
- (n) Provide the training materials to be used in the Training to the FWO no later than 14 days before the Training is to be conducted;
- (o) Provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the date on which the training was attended);
- (p) For a period of 3 years from the execution of this Undertaking, ensure that training is conducted in the manner prescribed in paragraphs 13(k)-(o) in relation to any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of JHH International;

*No Inconsistent Statements*

(q) JHH International and Jae Gi Jo:

- i. must not; and
- ii. must ensure that each of its officers, employees or agents, do not

make any statement, orally or in writing or otherwise imply anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

**Acknowledgements**

(r) JHH International and Jae Gi Jo acknowledge that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at <http://www.fairwork.gov.au> (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time,

publicly refer to the Undertaking and its terms;

- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by JHH International;
- (e) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;
- (f) if the FWO considers that JHH International and/or Jae Gi Jo has contravened any of the terms of this this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act;
- (g) consistent with section 715(3) of the FW Act, JHH International and/or Jae Gi Jo may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

EXECUTED by JHH International Pty Ltd and Jae Gi Jo in accordance with section 127(1) of the Corporations Act 2001:

(Signature of director)

(Signature of director/company secretary)

JAE GI, JO

(Name of director)

JAE GI, JO

(Name of director/company secretary)

30/09/2015

(Date)

30/09/2015

(Date)

in the presence of:

(Signature of witness)

in the presence of:

(Signature of witness)

YUN-HEE HWANG

(Name of witness)

YUN-HEE HWANG

(Name of witness)

ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:

Steve Ronson

Executive Director

Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN

9 OCTOBER 2015

(Date)

in the presence of:

(Signature of witness)

Kellie Fonseca

(Name of Witness)

**Attachment A – Employees**

[REDACTED]	Employee A
[REDACTED]	Employee B

JGJ YHH

**Attachment B – Schedule of underpayments to employees**

Employee	Total Underpayment
[REDACTED]	\$12,114.17 (less taxation)
[REDACTED]	\$4,102.57 (less taxation)

JGJ YHH



## Contraventions of the Fair Work Act 2009 and the Cleaning Services Award 2010 by JHH International Pty Ltd

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We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that JHH International Pty Ltd contravened the Fair Work Act 2009 and the Cleaning Services Award 2010.

JHH International Pty Ltd is a contract cleaning business operating in Queensland and no previous contraventions of Commonwealth workplace laws have been determined against JHH International Pty Ltd.

The FWO has found that JHH International Pty Ltd contravened the Fair Work Act 2009 and the Cleaning Services Award 2010 by:

- failing to pay the minimum hourly rate for ordinary hours worked
- failing to pay casual loading to employees employed on a casual basis
- failing to pay the correct afternoon shift loading
- failing to pay the correct night shift loading
- failing to pay the correct Saturday penalty rate
- failing to pay the correct Sunday penalty rate
- failing to pay the correct public holiday penalty rate
- failing to pay the correct broken shift allowance

JHH International Pty Ltd and its director Jae Gi Jo have formally admitted to the FWO that these contraventions occurred and have entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions and ensure compliance with Commonwealth workplace relations laws. JHH International Pty Ltd has rectified the underpayments.

JHH International Pty Ltd and Jae Gi Jo express their regret and apologise for the conduct which resulted in contraventions. Furthermore, JHH International Pty Ltd and Jae Gi Jo gives a commitment that such conduct will not occur again and that they will comply with all requirements of Commonwealth workplace relations laws in future.

Anyone can contact the FWO via the website [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94 to check their rates of pay and Award terms and conditions.