



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Jisu Design Pty Ltd

ABN: 42 165 459 923

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (the **Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Jisu Design Pty Ltd (ABN: 42 165 459 923) (**Jisu Design**) for 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 Jisu Design; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking (the **Commencement Date**), Jisu Design undertake to assume the obligations set out below.

Background

4. Jisu Design operates a hair and beauty salon located at 115 Lonsdale Street, Melbourne, Victoria, 3000.
5. The trading hours are Monday to Saturday between 10.00 am and 8.00 pm and Sunday between 12.00 pm and 6.00 pm.
6. The FWO commenced an investigation in March 2015 (the **Investigation**) regarding allegations of underpayment of hourly rates of pay and non-payment of annual leave at the end of employment from a former Employee (refer to Schedule A) of Jisu Design.
7. Jisu Design employed the Employee between 18 September 2014 and 12 February 2015 (**Employment Period**).
8. The Employee was employed on a part time basis. The duties performed by the Employee included cleaning, washing and blow drying hair, selling store products and customer service.
9. During the Employment Period, the Employee's terms and condition of employment were governed by the FW Act, *Fair Work Regulations 2009* (**FW Regulations**) and the *Hair and Beauty Industry Award 2010* (**Modern Award**).
10. Jisu Design underpaid the Employee for the hours worked by failing to pay the correct minimum hourly rates of pay in accordance with the Modern Award. The underpayments arose as a result of underpaying hourly rates of pay including all hours worked Monday to Friday, Saturday and Sunday.
11. Jisu Design did not pay the Employee annual leave entitlements at the end of the employment.

Contraventions

12. The FWO has determined, and Jisu Design admits, that on the basis of the factual matters outlined above, Jisu Design contravened:
 - (a) Section 45 of the FW Act, which states a person must not contravene a term of a modern award. Those contraventions were as follows:
 - Underpayment of base hourly rate (cl. 17);

- Underpayment of Saturday penalty rates (cl. 31.2 (b));
 - Underpayment of Sunday penalty rates (cl. 31.2 (c)); and
 - Underpayment of annual leave loading upon termination (cl. 33.3).
- (b) Section 44 of the FW Act which states a person must not contravene a provision of the National Employment Standards (NES). Those contraventions were as follows:
- Underpayment of annual leave upon termination (s90(2)).
- (c) Section 535(1) of the FW Act which states an employer must make and keep for 7 years, employee records of the kind prescribed by the regulation in relation to each of its employees. Those contraventions were as follows:
- Failure to keep a record that specifies whether the employee's employment is full-time or part-time; and whether the employee's employment is permanent, temporary or casual; and the date on which the employee's employment began (reg. 3.32);
 - Failure to keep a record that specifies the rate of remuneration paid to the employee; and the gross and net amounts paid to the employee; and any deductions made from the gross amount paid to the employee (reg. 3.33(1)); and
 - Failure to keep a record that is not false or misleading to the employer's knowledge (reg. 3.44)
- (d) Section 536(1) of the FW Act which states an employer must give a pay slip to each of its employees within one working day of paying an amount to the employee in relation to the performance of work.
- Failure to issue pay slips (536(1))

Undertakings

13. For the purposes of section 715 of the FW Act, Jisu Design undertakes to:

Rectify Underpayments

- (a) pay the amount of \$5,162.47 less taxation to the Employee arising from the Contraventions within 21 days of the Commencement of the Undertaking and provide evidence of payment to the FWO by the same date.

Future Workplace Relations Compliance

- (b) ensure that it complies at all times and in all respects with the FW Act, FW Regulations and the Hair and Beauty Award.
- (i) Within 14 days of the Commencement of this Undertaking, provide to the FWO pay slips issued to all current employees for the pay period ending most recent to the Commencement of this Undertaking.

FWO My Account Registration

- (c) within 14 days of the execution of this undertaking, register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options and provide to the FWO the Jisu Design 'My Account' registration number.
- (i) within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Officer by using the 'Pay Calculator' in 'My Account' via www.fairwork.gov.au the current Hair and Beauty Award minimum base ordinary pay rates and Saturday and Sunday rates of pay.

Workplace Notices

- (d) place a notice within the workplace (Workplace Notice) in the terms set out in Attachment A. The notice is to be placed, and photographic evidence of its display provided to the FWO, within 14 days of the execution of this Undertaking. This notice is to be accessible to all employees and posted for a total consecutive period of at least 14 days.

Public Notice

- (e) place a public notice in the Melbourne Observer Weekly Newspaper (**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 A;
- (i) Bears the name of Jisu Design Pty Ltd;
- (ii) Appears within the first 10 pages of the Melbourne Observer Weekly Newspaper;
- (iii) Is in the form of Attachment A

Provide a copy of the Public Notice to the FWO on the day of publication of the Public Notice;

Self-audits and Reporting

- (f) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of Jisu Design), an audit of its compliance with Commonwealth workplace laws. Specifically:
- (i) demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified.
- (ii) the audit is to include the first full single pay period of August 2016.
- (iii) provide a copy of the audit to the FWO within 7 days of its completion and prior to 1 September 2016.

Acknowledgements

14. Jisu Design acknowledges that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au;
- (b) the FWO may release a copy of this Undertaking (and any of the Attachments hereto) 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
- (d) the FWO may from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and

- (e) the FWO may rely upon the admissions made by Jisu Design set out in paragraphs 12 (a) – (d) above in respect of decision making concerning any future non-compliance with Jisu Design's workplace relations obligations.
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15. 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 herein; and

- (a) if the FWO considers that Jisu Design has contravened any of the terms of 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; and
- (b) this Undertaking may be provided to the court as evidence of admissions made by the Jisu Design in paragraphs 12 (a) – (d) above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by Jisu Design Pty Ltd (ABN: 42 165 459 923) in accordance with section 127(1) of the *Corporations Act 2001*:

(Signature of director)



(Name of director)

Sun hyung Lee

(Date)

22/09

in the presence of:

(Signature of director/company secretary)

(Name of director/company secretary)

(Date)

in the presence of:

(Signature of witness)



(Name of witness)

Dong Jin Kang

(Signature of witness)

(Name of witness)

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



Steven Ronson
Executive Director
Dispute Resolution and Compliance

(Date)

28 SEPTEMBER 2015

in the presence of:



(Signature of witness)

MATTHEW JAMES

(Name of Witness)

FORM OF PUBLIC AND WORKPLACE NOTICE

Contravention of *Fair Work Act 2009* and the *Hair and Beauty Industry Award 2010* by Jisu Design Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Jisu Design Pty Ltd contravened the *Fair Work Act 2009* and the *Hair and Beauty Industry Award 2010* by:

1. failing to pay an employee their correct minimum base hourly rate of pay for time worked Monday to Friday;
2. failing to pay an employee penalty rates for time worked on Saturdays;
3. failing to pay an employee penalty rates for time worked on Sundays; and
4. failing to pay an employee annual leave and annual leave loading at the end of their employment.

Jisu Design Pty Ltd has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments of \$5,162.47 less taxation to the employee affected by the contraventions. Jisu Design Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Jisu Design Pty Ltd gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for Jisu Design Pty Ltd and have queries or questions relating to your employment, please contact <insert details of internal contact>. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Schedule A

The Employee Name: [REDACTED]
