



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

ZHOU YANG EMPORIUM PTY LTD

ABN 81 167 773 453 / ACN 167 773 453

**Section 715 ENFORCEABLE UNDERTAKING**

**Parties**

1. This Enforceable Undertaking (Undertaking) is given to the Fair Work Ombudsman (FWO) by:
  - (a) Zhou Yang Emporium Pty Ltd (ACN 167 773 453) (**Zhou Yang Emporium**)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 Zhou Yang Emporium; and
  - (b) the FWO accepts the Undertaking so executed) as evidence by the FWO's endorsement below).
3. Upon the commencement of this Undertaking, Zhou Yang Emporium undertakes to assume the obligations set out below.

**Background**

4. Zhou Yang Emporium operates a fast food store trading as Bing Boy located at:
  - (a) Shop 3-023A, Emporium Shopping Centre 269-321 Lonsdale Street, Melbourne VIC 3000.
5. The FWO commenced an investigation in June 2015, (the **Investigation**) after it received a Request for Assistance (**RFA**) regarding allegations of underpayments by Zhou Yang Emporium to its former employee identified in Schedule A (the **Employee**).
6. Zhou Yang Emporium engaged the Employee on 7 November 2014. The employment is ongoing.
7. The FWO identified contraventions for the Employee between 7 November 2014 and 30 June 2015 (the **Contravention Period**).
8. During the Employment Period, the Employee's terms and conditions of employment were governed by the FW Act and the *Fast Food Industry Award 2010* (the **Fast Food Award**).
9. The investigation determined that the Employee was employed on a casual basis.
10. The Employee's duties at Zhou Yang Emporium included:
  - (a) Serve customers including cash handling
  - (b) Clean all work and serving areas
  - (c) Assist with the preparation of ingredients
  - (d) Cook and assemble the wraps
  - (e) Worked under the direction of a supervisor
11. The FWO determined the Employee was classified as a Fast Food Employee Level 1 in the Fast Food Award.

12. At all relevant times, Zhou Yang Emporium paid the Employee a flat rate of pay for all hours worked, including evening work, weekends and public holidays.
13. The FWO determined that during the course of the Contravention Period, Zhou Yang Emporium underpaid the Employee an aggregate total of \$5,513.47 (gross).

## **Contraventions**

14. The FWO has determined, and Zhou Yang Emporium admits, that on the basis of the factual matters outlined above, Zhou Yang Emporium 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 in accordance with the Fast Food Award:
    - Underpayment of base hourly rate (cl. 17);
    - Non-payment of casual loading (cl. 13.2);
    - Non-payment of Saturday penalty rate, (cl. 25.5(b))
    - Non-payment of Sunday penalty rate, (cl. 25.5(c)(ii))
    - Underpayment of public holiday penalty rate, (cl. 30.3)
    - Non-payment of special clothing or uniform allowance, (cl. 19.2(b)(ii))

## **Undertakings**

15. For the purposes of section 715 of the FW Act, Zhou Yang Emporium undertake to:

### Rectify Underpayments

- (a) After the execution of this Undertaking, rectify the contraventions identified in the Letter of Findings through payment of the total underpayment of \$5,513.47 (gross) to the Employee according to the payment plan in Schedule B.
- (b) Provide proof of such payment to the FWO on the day each payment is made.

### FWO MyAccount 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.
  - (i) within 15 days of the execution of the Undertaking provide to the FWO the Zhou Yang Emporium 'My Account' registration number.
  - (ii) within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a Fair Work Inspector through MyAccount, knowledge of the current Fast Food Award minimum pay rates and Saturday, Sunday and Public Holiday penalty rates.

### Future Workplace Relations Compliance

- (d) Ensure that it complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the Fast Food Award.

- (i) In addition to the requirement to provide a Fair Work Information Statement (FWIS) to new employees under the FW Act, Zhou Yang Emporium will provide the FWIS in the first language (where available from the FWO website) of the employee
- (e) Provide the FWO, within 28 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph (c) above. Without limitation, such systems and processes will include systems and processes relating to:
  - (i) Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
  - (ii) Issuing pay slips to employees within 1 working day of payment;
  - (iii) Keeping accurate and complete records to ensure employees receive their correct wages and entitlements; and
  - (iv) Provide to the FWO a copy of the Acknowledgement of Receipt – Fair Work Information Statement (Attachment C) referred to in paragraph (d) (i) for any new employees employed from:
    - a. 1 February 2016 to 31 July 2016 to be provided by 15 August 2016; and
    - b. 1 August 2016 to 31 January 2017 by 15 February 2017.

#### Workplace Relations Training

- (f) Within 90 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**);
- (g) 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 Fast Food Award;
- (h) Ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by Zhou Yang Emporium;
- (i) 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;
- (j) 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).

#### Apology

- (k) Send a letter of apology (**Apology Letter**) to the Employee listed in Schedule A in the

form of Attachment B to this Undertaking and provide copies to the FWO within 14 days of the execution of this Undertaking.

#### Audit Activity

- (l) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at Zhou Yang Emporium's expense, audits of Zhou Yang Emporium's compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of all employees as follows:
  - (i) The Audit 2 May 2016 to 29 May 2016 is to be finalised by 17 June 2016;
  - (ii) The Audit 2 January 2017 to 29 January 2017 is to be finalised by 17 February 2017;
- (m) Provide to the FWO within 14 days of each of the finalisation dates specified in subclause (l) above details of the methodology used to conduct the Audit and a report on the outcomes of the Audit;
- (n) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 28 days of each of the finalisation dates specified in subclause (l) above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO;
- (o) If any Employee(s) identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in subclause (l) above, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund. Zhou Yang Emporium will complete the required documents supplied by the FWO.

#### Public Notice

- (p) Place a public notice (**Public Notice**) in the Saturday edition of **Chinese Melbourne Daily** within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking. The Public Notice must:
  - (i) Bear the name of Zhou Yang Emporium;
  - (ii) Bear the logo (if any) of Zhou Yang Emporium;
  - (iii) Appear within the first 5 pages of the newspaper;
  - (iv) Must be at least 8cm x 10cm;
  - (v) Is in the form of Attachment A
- (q) Provide a copy of the Public Notice to the FWO within seven days of the publication of the Public Notice;

#### Workplace Notice

- (r) Within 28 days of the execution of this Undertaking, cause to be displayed within all workplaces controlled by Zhou Yang Emporium a notice in the form of Attachment A to

- this Undertaking (**Workplace Notice**) and provide photographic evidence of its display:
- (s) Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
    - (i) In a location to which all employees who work at Zhou Yang Emporium have access;
    - (ii) In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard;
    - (iii) For a period of 188 continuous days

#### Record Keeping

- (t) Within 28 days of the execution of the Undertaking provide to the FWO a copy of time and wage records and payslips for one employee for the first full pay period following the execution of this Undertaking. Such records are to comply with Commonwealth workplace laws

#### No Inconsistent Statements

- (u) Zhou Yang Emporium:
  - (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 admission or acknowledgements contained in this agreement.

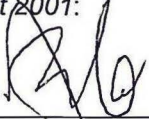
### **Acknowledgements**

16. Zhou Yang Emporium 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](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 Zhou Yang Emporium;
- (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 Zhou Yang Emporium 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;
- (g) consistent with section 715(3) of the FW Act, Zhou Yang Emporium may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

EXECUTED by Zhou Yang Emporium Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:



\_\_\_\_\_  
(Signature of director)

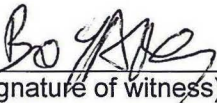
Hao Zhou

\_\_\_\_\_  
(Name of director)

21/01/2016

\_\_\_\_\_  
(Date)

in the presence of:



\_\_\_\_\_  
(Signature of witness)

BO YANG

\_\_\_\_\_  
(Name of witness)

\_\_\_\_\_  
(Signature of director/company secretary)

\_\_\_\_\_  
(Name of director/company secretary)

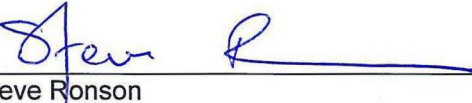
\_\_\_\_\_  
(Date)

in the presence of:

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(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

27 January 2016

\_\_\_\_\_  
(Date)

in the presence of:



\_\_\_\_\_  
(Signature of witness)

PIA MORGAN

\_\_\_\_\_  
(Name of Witness)

**Schedule A – Employees**





**Schedule B – Payment plan**

Payment plan to [REDACTED]	
Amount	Date
\$642.85 less taxation	29/1/16
\$642.85 less taxation	12/2/16
\$642.85 less taxation	26/2/16
\$642.85 less taxation	11/3/16
\$642.85 less taxation	25/3/16
\$642.85 less taxation	8/4/16
\$642.85 less taxation	22/4/16

## Attachment A – Form of Public and Workplace Notice

### Contravention of *Fair Work Act 2009* and the *Fast Food Industry Award 2010* by Zhou Yang Emporium Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Zhou Yang Emporium Pty Ltd contravened the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* by:

1. failing to pay an employee the correct minimum base hourly rate of pay for time worked Monday to Sunday;
2. failing to pay an employee casual loading;
3. failing to pay an employee penalty rates for time worked on Saturdays;
4. failing to pay an employee penalty rates for time worked on Sundays;
5. failing to pay an employee penalty rates for time worked on a public holiday; and
6. failing to pay an employee special clothing or uniform allowance.

Zhou Yang Emporium 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](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments of \$3,953.22 less taxation to the employee affected by the contraventions. Zhou Yang Emporium Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore Zhou Yang Emporium 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 Zhou Yang Emporium Pty Ltd and have queries or questions relating to your employment, please contact **Hao Zhou** on [REDACTED]

Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.

## Attachment B – Letter of Apology

### FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Zhou Yang Emporium Pty Ltd for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Zhou Yang Emporium Pty Ltd had contravened the *Fair Work Act 2009* by:

- failing to pay the correct minimum base hourly rate of pay for time worked Monday to Sunday;
- failing to pay casual loading;
- failing to pay penalty rates for time worked on Saturdays;
- failing to pay penalty rates for time worked on Sundays;
- failing to pay penalty rates for time worked on a public holiday; and
- failing to pay special clothing or uniform allowance.

Regrettably, the investigation determined that you were affected by the above contraventions.

Zhou Yang Emporium Pty Ltd is taking steps to remedy the contraventions, including by rectifying the amount that you have been underpaid through a payment plan and changing workplace practices. You will have received the first payment on 15 January 2016 and will be/have been provided with payment advice regarding the payment.

Zhou Yang Emporium Pty Ltd has formally admitted to the FWO that the company did not comply with its obligations under Commonwealth workplace relations laws and has entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au). As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Zhou Yang Emporium Pty Ltd expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Hao Zhou on <xxxxxx>.

Yours sincerely

Mr Hao Zhou  
Director, Zhou Yang Emporium Pty Ltd