



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Group K Pty Ltd. (ACN: 169 084 977)

and

Mr Hyojae Lee

Section 715 ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (the **Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Group K Pty Ltd (ACN: 169 084 977) (the **Company**) and
 - (b) Hyojae Lee (**Mr Lee**), Director, Group K Pty Ltd.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 the Company and Mr Lee; and
 - (b) the FWO accepts the Undertaking so executed.
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Upon the commencement of this Undertaking, the Company and Mr Lee undertake to assume the obligations set out below.

BACKGROUND

3. The Company's business provided commercial cleaning services at various locations in Sydney and operated from Unit 1, 9-11 Taylor Street, Lidcombe NSW 2141. The business ceased operating on 31 January 2016.
4. Mr Lee admits and agrees that, at all material times, he:
 - (a) was the sole director of the Company, having been so since 14 April 2014;
 - (b) was ultimately responsible for overall direction, management and supervision of the operations at the Company in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment;
 - (c) by reason of the matters set out in subparagraphs (a) and (b) was responsible in a practical sense for ensuring the Company complied with its legal obligations.
5. In October 2015, the FWO received three (3) requests for assistance from former employees identified in Schedule A (the **Employees**) concerning the Company relating to underpayment of wage entitlements and non provision of pay slips.
6. The FWO conducted an investigation into the requests for assistance and identified contraventions of the *Cleaning Services Award 2010* (the **Cleaning Award**), the FW Act and the *Fair Work Regulations 2009* (**FW Regulations**).
7. The Employees were employed on a full time basis. The duties performed by the Employees included but were not limited to general cleaning duties in commercial buildings: sweeping, mopping, vacuuming, toilet cleaning and rubbish collection.
8. The Employees' classification under the Cleaning Award was a Cleaning Service Employee Level 1.

9. The FWO identified contraventions for the period 9 June 2015 to 12 October 2015. The contraventions included underpayment of minimum hourly rates of pay, non payment of penalties, non payment of overtime, non payment of transport allowance, non payment of annual leave and annual leave loading, and unlawful deductions.
10. The Company also failed to make and keep employee records and failed to provide payslips to the Employees.
11. The underpayments arising from the contraventions totalled \$38,566.97 (gross).

CONTRAVENTIONS

12. The FWO has determined and the Company admits, that on the basis of the factual matters outlined above, the Company 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 Cleaning Award:

- i. Underpayment of base hourly rate (cl. 16.1);
- ii. Non payment of early morning, afternoon and non-permanent night shift loading (cl. 27.1);
- iii. Non payment of weekend penalties (cl. 27.2);
- iv. Non payment of public holiday penalty (cl. 27.3);
- v. Non payment of overtime penalties (cl. 28);
- vi. Non payment of using own transport allowance (cl. 17.3); and
- vii. Non payment of annual leave and annual leave loading (cl.29).

(b) Section 324.(1)(a) of the FW Act which provides that an employer may deduct an amount from an amount payable to an employee if the deduction is authorised in writing by the employee and is principally for the employee's benefit;

(c) Section 535 of the FW Act which states an employer must make and keep for 7 years employee records of the kind prescribed by the FW regulation in relation to each of its employees and must contain information as prescribed by the FW Regulations; and

(d) Section 536 of the FW Act which provides that an employer must give a payslip to each of its employees within one working day of paying an amount to the employee in relation to the performance of work.

UNDERTAKINGS

13. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, the Company and Mr Lee undertake the following:

Rectify Underpayments

- (a) Pay the amount of **\$38,566.97** less taxation to the Employees via electronic funds transfer arising from the Contraventions in accordance to the payment plan in Schedule B;
- (b) Provide proof of each instalment payment to the FWO no later than 7 days after each payment is made;

Apology

- (c) Within 14 days of execution of this Undertaking, send a letter of apology (Apology

Letter) in the form of **Attachment A** to each of the Employees and provide evidence of the apology letter sent to the FWO on the same date.

Public Notice

- (d) The company will place a public notice (**Public Notice**) in the Saturday edition of Sydney Morning Herald within 28 days, but not prior to, the FWO publishing a Media Release on its website regarding this Undertaking, in the form of **Attachment B** and bearing the name of Group K Pty Ltd, the Company logo (if any) of Group K Pty Ltd and provide a copy of the Public Notice to the FWO within seven days of the publication.

Reporting

- (e) Every six months from the execution of this Undertaking, report to the FWO if the Company or any entities in which Mr Lee holds the role of director, sole trader or partner, has engaged any workers.
- (f) If the Company or any entities in which Mr Lee holds the role of director, sole trader or partner, engages any workers within two years of the commencement of this Undertaking:
- i. inform the FWO within 14 days of the first worker commencing duties (**the Reporting Date**);
 - ii. ensure that it complies at all times and in all respects within the FW Act, FW Regulations and the relevant Modern Award;

14. If the Company or any entities in which Mr Lee holds the role of director, sole trader or partner, engages any workers within two years of the commencement of this Undertaking, the Company and Mr Lee undertake the following:

FWO My Account Registration

- (a) within 14 days of the the Reporting Date:
- i. register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options; and
 - ii. provide to the FWO the Company's 'My Account' Customer Registration Number (CRN).
- (b) within 14 days of the the Reporting Date, subscribe to the following and provide evidence to the FWO of the subscriptions:
- i. 'General information' email alerts from the FWO relating to the relevant modern award, available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>;
 - ii. FWO's Employer newsletter for the relevant State and industry, available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>, selecting at least the following options:
 - pay updates;
 - award updates;
 - holiday updates;
 - working hours and breaks; and
 - annual leave/sick leave.

- (c) Within 21 days of the Reporting Date, 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 relevant modern award rates of pay, penalties and allowances for casual, part time and full employees for all Levels for work performed.

Workplace Relations Training

- (d) Provide or design and implement within 28 days of the Reporting Date an ongoing training program to ensure that training is conducted in the manner prescribed by paragraphs 14(e)(i)&(ii) below so that all persons responsible, either directly or indirectly, are made aware of the Company's obligations under Commonwealth workplace laws;
- (e) Ensure the training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by the Company;
- 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;
 - ii. within 7 days of the training being conducted, provide the FWO with evidence of attendance at the training (including the name and position of all attendees and the date on which the training was attended).

Self – Audits

- (f) Have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Company and/or Mr Lee) an audit of the Company's and/or Mr Lee's compliance with Commonwealth workplace laws every six months from the Reporting Date, for a period of two years. Specifically:
- i. audit reports must be provided to the FWO within 28 days after each six months;
 - ii. compliance must be demonstrated relating to the wages and entitlements of its employees and any Contraventions identified;
 - iii. audit is to be of the first full pay period after the sixth, twelfth, eighteenth and twenty-fourth month after the engagement of the first employee and must be completed; and a copy of the audit must be supplied to the FWO within seven days of its completion.

Future Workplace Relations Compliance

- (g) Take all reasonable steps to ensure that any entities in which Mr Lee holds the role of director, a sole trader or partner, comply at all times, and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and the FW Act, by developing systems and processes to promote ongoing compliance with those requirements. In particular, develop and implement demonstrable systems and processes to:
- i. ensure employees receive the correct minimum rates of pay and entitlements;
 - ii. keep accurate and complete records to ensure employees receive their correct wages and entitlements; and
 - iii. issue payslips within one working day of paying an amount to each employee.

Executed as an undertaking

EXECUTED by Group K Pty. Ltd. (ACN: 169 084 977) in accordance with section 127(1) of the *Corporations Act 2001*:

(Signature of director)


(Name of director)

(Date)

in the presence of:

(Signature of witness)

(Name of witness)



(Signature of director/company secretary)


Site
Hyo Jae LEE

(Name of director/company secretary)

17 June 2016

(Date)

in the presence of:




(Signature of witness)

SE-YOON KIM


(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
Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:



(Signature of witness)

11 JULY 2016

(Date)

NERILLY HARRIS

(Name of Witness)

SCHEDULE A – EMPLOYEES

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

SCHEDULE B – PAYMENT PLAN

Name	Payment date	Amount (less taxation)
	30 June 2016	\$2,760.44
	31 July 2016	\$2,760.44
	31 August 2016	\$2,760.46
	30 June 2016	\$6,017.51
	31 July 2016	\$6,017.51
	31 August 2016	\$6,017.51
	30 June 2016	\$4,077.70
	31 July 2016	\$4,077.70
	31 August 2016	\$4,077.70
Total		\$38,566.97

ATTACHMENT A – 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 Group K Pty. Ltd. (the **Company**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Company had contravened the *Fair Work Act 2009, Fair Work Regulations and the Cleaning Service Award 2010*:

- failing to pay you correct minimum rate of pay for ordinary hours worked;
- failing to pay you correct shift loading for ordinary hours worked between Monday and Friday starting before 6.00am or finishing after 6.00pm;
- failing to pay you correct weekend penalties;
- failing to pay you correct public holiday rate;
- failing to pay you correct overtime penalties;
- failing to pay you annual leave and annual leave loading;

- failing to pay you vehicle allowance;
- making unlawful deduction;
- failing to provide you with pay slips within one working day of payment of wages;
- failing to keep appropriate time and wage records; and
- failing to keep appropriate employee records.

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

The Company is taking steps to remedy the contraventions, including by rectifying \$[insert amount] that you have been underpaid. You will/have receive/d this payment on [insert date] and will be provided with payment advice regarding the payment.

The Company and Director, Mr Hyojae Lee have formally admitted to the FWO that they did not comply with their obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at 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.

The Company and Mr Lee express their sincere regret and apologise to you for failing to comply with our lawful obligations.

Should you have any questions, please contact me on [insert phone number].

Yours sincerely,

Hyojae Lee

Director – Group K Pty. Ltd.

ATTACHMENT B –PUBLIC NOTICE

Contravention of *Fair Work Act 2009* and the *Cleaning Services Award 2010*

by Group K Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Group K Pty Ltd contravened the *Fair Work Act 2009*, *Fair Work Regulations 2009* (Cth) and the *Cleaning Services Award 2010* by:

1. failing to pay you correct minimum rate of pay for ordinary hours worked;
2. failing to pay you correct shift loading for ordinary hours worked between Monday and Friday starting before 6.00 am or finishing after 6.00 pm;
3. failing to pay you correct weekend penalties;
4. failing to pay you correct public holiday rate;
5. failing to pay you correct overtime penalties;
6. failing to pay you annual leave and annual leave loading;
7. failing to pay you vehicle allowance;

8. making unlawful deduction;
9. failing to provide you with pay slips within one working day of payment of wages;
10. failing to keep appropriate time and wage records; and
11. failing to keep appropriate employee records.

Group K Pty Ltd and the Director Mr Hyojae Lee have formally admitted to FWO that these contraventions occurred and have 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 \$XX,XXX.XX less taxation to the employee affected by the contraventions. Group K Pty Ltd and Mr Lee express their sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore Group K Pty Ltd and Mr Lee give 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 Group K Pty Ltd and have queries or questions relating to your employment, please contact **Hyojae Lee** on **XXXX XXX XXX**.

Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.