



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

UNIMET SECURITY PTY LTD

(ABN 29 127 664 822)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (FWO) by:
 - (a) UNIMET SECURITY PTY LTD (ABN 29 127 664 822) (**UNIMET**);
 - and
 - (b) Ms Natalie Kisbee.for the purposes of section 715 of the *Fair Work Act 2009* (FW Act).

Background

2. UNIMET was incorporated on 21 September 2007 and the company is engaged in the security services industry, operating in the Sydney, Central Coast and Newcastle areas.
3. Natalie Anne Kisbee is the Director of UNIMET.
4. UNIMET currently has a workforce of 75 employees.
5. Ms Kisbee admit and agree that, at all material times, she was:
 - (a) principally responsible for the direction and management of business operations;
 - (b) responsible for setting the pay rate for the Employees; and
 - (c) by reason of the matters set out in subparagraphs (a) to (b) were responsible in a practical sense for ensuring the Company complied with its legal obligations.
6. The FWO commenced an investigation in January 2016 (**Investigation**) after it received a Request for Assistance (RFA) from a former employee (Employee 1) alleging an underpayment of wages. In March 2016, the FWO received a second request for assistance from another former employee (Employee 2) similarly alleging an underpayment of wages. The FWO included this second dispute in its investigation of UNIMET. This instrument refers to both employees as the **Employees**.
7. Employee 1 was engaged by UNIMET from 11 March 2013 to 12 December 2015:
 - (a) Employee 1's status of employment changed from part time, to casual and then to full time during this period.
 - (b) Employee 1 was underpaid from 27 January 2014 on the flat rate of pay of \$22 per hour until termination of employment.
 - (c) Employee 1 was engaged to work at times attracting night and weekend penalties as well as overtime rates.
8. Employee 2 was engaged by UNIMET from 1 January 2015 to 8 May 2016.
 - (a) Employee 2 was engaged as a casual employee for the entire time;
 - (b) Employee 2 was underpaid for the entire period of service on a flat rate of pay of \$20 per hour.
 - (c) Employee 2 was engaged to work mainly day shifts, but on occasion performed work at times attracting night shift and overtime rates.
9. The Employees' terms and conditions of employment were informed by the *Fair Work Act 2009*



(Act) and the *Security Services Industry Award 2010 (Security Award)*. Both Employees were engaged in the classification *Security Services Employee Level 1*.

10. UNIMET agreed that it underpaid:
 - (a) Employee 1 – \$12,086.58
 - (b) Employee 2 – \$477.42 (additional amount identified)
11. The underpayments arose due to UNIMET adopting a 'flat rate of pay system.' UNIMET intended the 'rate of pay' to incorporate penalties, overtime and other entitlements, however, the 'flat rates' were not high enough to take account of all entitlements under the Security Award, particularly in light of the times the Employees worked.
12. As a result of the Investigation, UNIMET conducted a self-audit of its Employees on the flat rate of pay system and the following additional employees (identified in Schedule A) were also found to be underpaid:
 - (a) Employee 2 - \$5 976.72
 - (b) Employee 3 - \$6,408.78
 - (c) Employee 4 - \$1,085.77
 - (d) Employee 5 - \$3,655.34
13. A total of \$29 690.31 in underpayments was recovered and payment was made to the Employees.

Contraventions

14. The FWO has determined, and UNIMET admits, that on the basis of the factual matters outlined above, UNIMET contravened:
 - (a) Section 45 of the Act, which states a person must not contravene a term of a modern award. Those contraventions under the Security Award are as follows:
 - (i) Underpayment of casual loading in clause 10.5(b)
 - (ii) Non-payment of penalty rates in clause 22.3
 - (iii) Non-payment of overtime rates in clause 23.3
 - (iv) Failure to accrue annual leave entitlements for Employee 1 for certain periods as per section 87 of the Act

Commencement of Undertaking

15. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by UNIMET and Ms Kisbee; and
 - (b) the FWO accepts the Undertaking as executed.
16. Upon the commencement of this Undertaking, UNIMET and Ms Kisbee undertake to assume the obligations set out below.

Undertakings

17. For the purposes of section 715 of the FW Act, UNIMET and Ms Kisbee undertakes to:



Self Audit and Reporting Activity

- (a) UNIMET will have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at the expense of UNIMET, audits of its compliance with all Commonwealth workplace laws and instruments (**the Audits**), relating to pay and conditions of 25% of UNIMET's workforce engaged under the Security Award for two months of each calendar year as follows:
 - (i) Audit for the calendar year 2016 to be finalised by 28 February 2017
 - (ii) Audit for the calendar year 2017 to be finalised by 28 February 2018; and
 - (iii) Audit for the calendar year 2018 to be finalised by 28 February 2019.
- (b) Provide to the FWO, at least 14 days prior to the commencement of the audit being undertaken, the methodology used for the purpose of the Audit for approval by the FWO;
- (c) Provide the reports resulting from the Audits to the FWO within 14 days of the dates specified in subclause (a) above;
- (d) In the event the an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions and provide evidence of the rectification with 28 days of each of the dates specified in subclause 17(a) above.

FWO MyAccount Registration

- (e) Within 12 days of the execution of this Undertaking, register with the FWO MyAccount portal at www.fairwork.gov.au and complete the profile, minimum pay rates and Award options for the Security Award.
 - (i) Within 15 days of the execution of the Undertaking, provide to the FWO the UNIMET MyAccount Customer Registration Number (CRN).

Future Workplace Relations Compliance

- (f) Ensure that UNIMET complies at all times and in all respects of Act, the *Fair Work Regulations 2009 (Regulations)* and the Security Award including but not limited to:
- (g) Provide to the FWO, within 28 days of the date of execution of this Undertaking, details of the systems and processes in place or to be implemented that comply with paragraph (f) above. Without limitation, such systems and processes will include:
 - (i) Ensuring employees receive the correct minimum rates of pay and entitlements such as penalties and overtime rates;
 - (ii) Ensuring employees receive their break entitlements in accordance with 21.6 of the Security Award, in particular a clear delineation for each employee about whether they are on an unpaid break or crib break entitlement as per subsection (a) and (c);
 - (iii) Provide to employees a direct line of communication with payroll and management to raise issues about their pay and other conditions of employment, such as via a designated email address or contact person;
 - (iv) Ensure that operations managers communicate promptly with payroll about changes to employee conditions of employment and rostering conditions.

Supply Chain Accountability

- (h) UNIMET must:
 - (i) Review its schedule of fees contained within all its written contracts and verbal agreements with each contractor and index these costs against the applicable Security Award rates effective from 1 July every year.



- (ii) Ensure that if UNIMET subcontracts the supply of labour to further entities in the supply chain, that the subcontractor must ensure compliance with workplace laws, including the applicable Act and Security Award and related instruments in respect of all workers engaged by the subcontractor.
- (iii) Terminate the contract of any contractor (or subcontractor) it finds have breached its obligations under the Act.
- (iv) Report to the FWO at the end of each financial year until 30 June 2019 the list of contractors and subcontractors UNIMET has currently engaged and/or terminated relations with.

Apology

- (i) Send a letter of apology to Employee 1 and 2 listed in Schedule A in the form of Attachment A to this undertaking.
- (j) Provide a copy to the FWO of the Apology Letter sent to the Employees within 14 days of execution of this Undertaking.

Workplace Notice

- (k) Place a notice within the workplace, such as UNIMET's online staff portal, which is accessible to all employees (**Workplace Notice**) within 28 days of the execution of this Undertaking in the terms set out in Attachment B;
- (l) provide a copy of the Workplace Notice and written details of how the Workplace Notice has been displayed within 7 days of publication/display of the notices;
- (m) The Workplace Notice must:
 - (i) be displayed for a continuous period of at least 60 days; and
 - (ii) in a manner which is reasonably capable of drawing the notice to the general attention of all persons engaged by UNIMET (for example, by placement on a staff noticeboard or online portal and at least A4 in size).

Contribution Payment

- (n) UNIMET undertakes to:
 - (i) Make a donation of \$1000 within 60 days of execution to the Mt Druitt & Area Community Legal Centre Inc. [ABN 21 806 225 163] of 76 Rooty Hill Road North, Rooty Hill NSW 2766; and
 - (ii) Provide proof of the donation above to the FWO on the day of the payment being made.

No Inconsistent Statements

- (o) UNIMET and Ms Kisbee:
 - (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 Undertaking.

Acknowledgements

18. UNIMET and Ms Kisbee acknowledges that:

- (a) the FWO may make this Undertaking (including any attachments) available for public



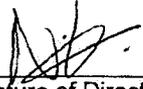
inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);

- (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 UNIMET and Ms Kisbee;
- (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 UNIMET and Ms Kisbee 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 UNIMET and Ms Kisbee may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.



Executed as an undertaking

EXECUTED by UNIMET SECURITY PTY LTD in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of Director)

(Signature of Director)

Natalie Anne Kisbee

(Name of Director)

(Name of Director)

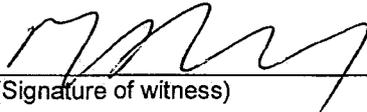
7/11/16

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

Michael Gledhill

(Name 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

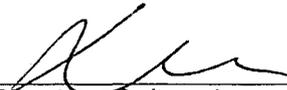
15/11/16

(Date)

Executive Director Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

LISA-MARIE OLIVER

(Name of Witness)

Schedule A ~ List of Employees

Identifier	Name	Date RFA lodged
Employee 1	[REDACTED]	27 January 2016
Employee 2	[REDACTED]	29 March 2016

Additional employees (identified in self-audit)

Identifier	Name
Employee 3	[REDACTED]
Employee 4	[REDACTED]
Employee 5	[REDACTED]

Attachment A – Apology Letter

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of UNIMET SECURITY 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 UNIMET SECURITY PTY LTD had contravened the *Fair Work Act 2009* by:

- Underpayment of the casually loaded rate as per cl 10.5(b) of the Award;
- Non-payment of penalties as per clause 22 of the Award;
- Non-payment of overtime as per clause 23 of the Award; and
- Failure to accrue annual leave for a permanent employee as per section 87 of the Act <not applicable for Employee 2>

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

UNIMET SECURITY PTY LTD is taking steps to remedy the contraventions, including rectification of the amount that you were underpaid and changing workplace practices. Payment was to you on <DATE> for the sum of <INSERT AMOUNT> in back pay to rectify the above contraventions.

UNIMET SECURITY 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. As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

UNIMET SECURITY 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 **Natalie Kisbee** via email at

████████████████████.

Yours sincerely

Ms Natalie Ann Kisbee, Director of UNIMET SECURITY PTY LTD.

Contraventions of Fair Work Act 2009 and the Security Services Industry Award 2010 by UNIMET SECURITY PTY LTD

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that UNIMET SECURITY contravened the *Fair Work Act 2009* and the *Security Services Industry Award 2010* by:

- Underpayment of the casually loaded rate as per cl 10.5(b) of the Award;
- Non-payment of penalties as per clause 22 of the Award;
- Non-payment of overtime as per clause 23 of the Award; and
- Failure to accrue annual leave for certain periods as required by clause 87 of the Fair Work Act

UNIMET SECURITY 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 to the employee affected by the contraventions. UNIMET SECURITY PTY LTD expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore UNIMET SECURITY 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 UNIMET SECURITY PTY LTD and have queries or questions relating to your employment, please contact **Natalie Kisbee** on [REDACTED].

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