

Pay packet review for call centre workers

6 February 2014

Telemarketers who worked in call centres across Australia will have their paypackets reviewed as part of an audit by two national companies of their laborengagement practices.

The workers were initially engaged as independent contractors, but the FairWork Ombudsman formed the view they were misclassified, and should have beenengaged as employees under workplace laws.

Telco Services Australia Pty Ltd (TSA) and Trimatic Contract Services Pty Ltd(TCS) are now in the process of changing their practices, so that the relevantcall centre workers will be employees and not independent contractors.

The companies have also agreed to self-audit their records to determine ifany workers who performed sales and marketing work between July, 2012 and June,2013 were underpaid as a result of misclassification - and to voluntarilyreimburse any outstanding entitlements they may find.

Further, a telephone hotline and email address have been established to dealspecifically with any new complaints from workers engaged by the companies abouttheir entitlements.

Both companies, and directors Peter William Jones and Timothy Mark Ungar,have entered into an Enforceable Undertaking with the Fair Work Ombudsman as analternative to litigation.

The Fair Work Ombudsman first investigated TSA and TCS in 2009 afterreceiving complaints.

TSA and TCS, together with a number of other companies, form part of the TSATelco Group, which is a national provider of outsourced sales and sales supportto third party businesses.

As part of their investigation, Fair Work inspectors made simultaneous,unannounced inspections of call centres in Perth, Melbourne, Brisbane, Sydneyand Adelaide.

In April, 2011, the Fair Work Ombudsman commenced litigation in the FederalCourt in Melbourne alleging sham contracting activity.

It later withdrew legal proceedings following TSA and TCS changing theirbusiness model for engagement of workers and the agreement by both companies tomake other commitments in an Enforceable Undertaking on future compliance withfederal workplace laws.

Since 2004, Telco Services Australia has been contracted by a nationaltelecommunications provider to deliver direct marketing and sales services.

It operates call centres in Western Australia, Victoria, NSW, the NorthernTerritory, Queensland and South Australia to market its products and services.

Details of the Enforceable Undertaking have beenposted on the TSA Telco Group website and on noticeboards in each workplace, aswell as the Fair Work Ombudsman's website at www.fairwork.gov.au

The Enforceable Undertaking requires TSA and TCS to:

- Complete the process of engaging call centre staff performing work related to the national telecommunications provider contract as employees and provide evidence to the Fair Work Ombudsman,
- Commission workplace relations training for Mr Ungar, Mr Jones and other managers,
- Develop processes to ensure ongoing compliance with workplace laws and provide details to the Fair Work Ombudsman, and
- Promptly assess and respond to any new complaints lodged with the Fair Work Ombudsman.

Back-payment to two complainants who were involved in the Fair Work Ombudsmanlitigation was also required.

Any other workers found to have been underpaid during the self-audit must bereimbursed and the companies are required to take "reasonable steps" to locateformer workers no longer with the companies.

Any money owed to workers who cannot be located will be paid to the Fair WorkOmbudsman and held in trust.

Enforceable Undertakings were introduced by legislation in 2009 and the FairWork Ombudsman has been using them to achieve strong compliance outcomes against companies that allegedly breach workplace laws.

"Their purpose is to focus the employer on the tasks to be carried out to remedy the alleged contravention and/or prevent a similar contravention in the future," says Fair Work Ombudsman Natalie James said.

"Many of the initiatives included in Enforceable Undertakings - like compulsory training sessions - help to build a greater understanding of workplace responsibilities."

Ms James says it is vital that employers ensure workers are classified correctly because if they are incorrectly classified as independent contractor they can miss out on important employee entitlements and protections, such as minimum rates of pay and leave entitlements.

Employers and employees seeking assistance should visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available by calling on 13 14 50.

Information regarding independent contracting and sham contracting is available at www.fairwork.gov.au/contractors (www.fairwork.gov.au/find-help-for/independent-contractors/independent-contractors)

Find out more:

- [Enforceable Undertaking Telco Services Pty Ltd \(PDF 355.5KB\) \(www.fairwork.gov.au/ArticleDocuments/586/Enforceable-Undertaking-Telco-Services-Australia.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/586/Enforceable-Undertaking-Telco-Services-Australia.pdf.aspx)
- [Enforceable Undertaking Telco Services Pty Ltd \(DOCX 318.3KB\) \(www.fairwork.gov.au/ArticleDocuments/586/Enforceable-Undertaking-Telco-Services-Australia_.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/586/Enforceable-Undertaking-Telco-Services-Australia_.docx.aspx)

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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