

# EXAMPLE – COMPLIANCE NOTICE

GPO Box 93214 SYDNEY 2000

## COMPLIANCE NOTICE

(issued under section 716(2) of the *Fair Work Act 2009* (Cth))

Date of Issue: 1 July 2023

<b>Name of Employer:</b>	JACKSOVE PTY LTD
<b>ABN/ACN:</b>	ABN: 21 210 210 210 / ACN: 210 210 210
<b>Director:</b>	Jack Smith

I, Alison Surname, being a duly appointed Fair Work Inspector, reasonably believe that Jacksove Pty Ltd trading as Jim & June's Hotel (**Employer**) has contravened a term of the *Hospitality Industry (General) Award 2020 (Award)* and a provision of the *National Employment Standards (NES)* in Part 2-2 of the *Fair Work Act 2009 (Cth) (FW Act)*, as described below. This Compliance Notice requires you to take steps to remedy the contraventions described below.

### Rights and obligations under this Compliance Notice

1. Failure to comply with this Compliance Notice may contravene a civil remedy provision and render you liable for a civil penalty (unless you have a reasonable excuse). See sections 716(5) and 716(6) of the FW Act.
2. You may be liable to a civil remedy if you give false or misleading information or produce false or misleading documents. It is also a serious offence under the *Criminal Code* (Cth).
3. If you do not comply with this Compliance Notice, the Fair Work Ombudsman may, without further notice, commence legal action against you and/or individuals involved in your failure to comply with this Compliance Notice to recover any outstanding monies which this Compliance Notice requires you to pay and to seek civil penalties.
4. Complying with the Compliance Notice is not an admission that you contravened, or have been found to have contravened, the Award or the FW Act.
5. You may apply to the Federal Court, Federal Circuit and Family Court (Division 2) or eligible State or Territory Court for a review of this Compliance Notice on either or both of the following grounds:
  - (a) you did not commit the contraventions set out in this Compliance Notice;
  - (b) this Compliance Notice does not comply with sections 716(2) or 716(3) of the FW Act.

## Details of the contraventions

6. The Employer employed Sarah Jones (**Employee**) on a full-time basis as a [insert details of level and classification here.]
7. The Employer, between 10 March 2023 and 10 April 2023 (**Period**), contravened the clause of the Award set out in Table 1 below and the provision of the NES set out in Table 2 below.

**Table 1**

<b>No</b>	<b>Clause</b>	<b>Details of Award contravention</b>
(a)	Clause 18.1	<b>Full-time Minimum Wage contravention</b> failing to pay the minimum wage to the Employee in respect of the ordinary hours worked by the Employee <b>(Full-time Minimum Wage Entitlement)</b>

**Table 2**

<b>No</b>	<b>Section</b>	<b>Details of NES contravention</b>
(b)	90(2) of the FW Act	<b>Annual Leave on Termination contravention</b> failing to pay the Employee the full amount that would have been payable to the Employee, had the Employee taken the accrued but untaken annual leave owing to the Employee when the Employee's employment ended on 10 April 2023 being: <ul style="list-style-type: none"><li>• the full amount of payment for annual leave that was accrued to the Employee; and</li><li>• the full amount of payment for annual leave loading of 17.5% on the annual leave that was accrued payable under clause 30.3 of the Award</li></ul> <b>(Accrued Annual Leave Entitlement)</b>

## Required action under this Compliance Notice

8. In accordance with section 716(2) of the FW Act, I require you by **31 July 2023** to:

### **Step 1 – calculate and rectify underpayments**

- (a) In respect of the contravention referred to in row (a) of Table 1 above and in relation to the Employee:
  - (i) identify the number of hours the Employee worked during the Period in respect of which the Entitlement was required to be paid by the Award (**Hours**)
  - (ii) identify the amount the Employer paid to the Employee during the Period in respect of the Entitlement (having regard to the Hours, where applicable);
  - (iii) calculate the amount the Employer should have paid to the Employee during the Period in respect of the Entitlement (having regard to the Hours) and identify the applicable rates of pay within the Period and the period during which each date applied;
  - (iv) make a payment to the Employee of the difference between the amount referred to in (ii) and the amount referred to in (iii) immediately above; and

- (v) make a record of the information and amounts referred to in (i) and (ii) and the amount of the payment referred to in (iv) immediately above (**Underpayment Rectification Information**)
- (b) In respect of the contravention referred to in row (b) of Table 2 above and in relation to the Employee:
- i. identify the number of accrued untaken paid annual leave at the end of the Employee's employment in respect of which the Accrued Annual Leave Entitlement was required to be paid (**Accrued Annual Leave Hours**);
  - ii. identify the amount the Employer paid to the Employee at the end of the Employee's employment in respect of the Accrued Annual Leave Entitlement (having regard to the Accrued Annual Leave Hours and any applicable annual leave loading entitlement) and identify the applicable rate of pay;
  - iii. calculate the amount the Employer should have paid to the Employee at the end of the Employee's employment in respect of the Accrued Annual Leave Entitlement (having regard to the Accrued Annual Leave Hours and any applicable rate of pay);
  - iv. make a payment to the Employee of the difference between the amounts referred to in (ii) and (iii) immediately above; and
  - v. make a record of the information and amounts referred to in (i) to (iii) and the amount of the payment referred to in (iv) immediately above (**Annual Leave Rectification Information**)

**Step 2 – Superannuation**

- (c) calculate any additional superannuation contributions required by clause 27.2 of the Award in respect of the amounts required to be paid to the Employee as a result of Step 1
- (d) in relation to the Employee, pay such additional superannuation contributions to the chosen Superannuation Fund of the Employee.

***Reasonable evidence of steps taken to comply with this Compliance Notice***

9. In accordance with section 716(2) of the FW Act, I require you to produce the following reasonable evidence of your compliance with the actions specified in paragraph 8 above:
- (a) in respect of the Employee, a schedule that sets out:
    - (i) the Underpayment Rectification Information
    - (ii) the Annual Leave Rectification Information
    - (iii) the additional superannuation contributions calculated for the Employee and paid to the Employee's Superannuation Fund in accordance with Step 2
  - (b) proof that full payment has been made to the Employee identified in Step 1 of the payments required to be made by Step 1 and Step 2, such as a bank transfer showing the transfer of funds to the Employee and their Superannuation Fund, or a copy of the Employee's payroll records showing the payments.
10. The evidence referred to above must be provided to the Fair Work Ombudsman by **31 July 2023** by email to [a.surname@compliance.gov.au](mailto:a.surname@compliance.gov.au) or by post to GPO Box 93214, SYDNEY 2000.
11. You may be liable to a civil penalty or other civil remedy under the FW Act if you give false or misleading information or produce false or misleading documents in response to this Compliance

Notice. You may also be liable for a criminal offence under the *Criminal Code* (Cth) if you do so.

Alison Surname  
**Fair Work Inspector**  
**Fair Work Ombudsman**

EXAMPLE ONLY