



Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:

ATM Cleaning Management Pty Ltd (ABN 18 092 601 860) (**ATM**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. ATM provides commercial cleaning services to diverse industries including commercial buildings and accommodation hotels.
3. ATM was incorporated on 27 April 2000. The current Director is Cho Rok Jun and the General Manager is Ms Micky An.
4. ATM employs a total of sixty five workers comprising forty five performing housekeeping duties (room cleaning and servicing) at hotels; and twenty in general cleaning duties.
5. On 11 August 2014, the FWO commenced an audit of ATM as part of an Inquiry into the procurement and employment practices of housekeepers working in certain 4 and 5 star hotels in Australia.
6. Following an investigation into the nature of work performed by housekeepers employed at various Starwood owned hotels the FWO found that:
 - (a) ATM has no direct commercial relationship with Starwood Hotels. All hospitality related cleaning services are provided through a Principal Contractor arrangement with International Hotel Services Pty Ltd (IHS);
 - (b) ATM does not further subcontract its cleaning services at the Four Points by Sheraton Sydney located in Darling Harbour;
 - (c) ATM's workforce is generally made up of overseas workers who are on either student or working holiday visas;
 - (d) The employees perform various duties related to cleaning and servicing accommodation at the Four Points by Sheraton Sydney located in Darling Harbour. They are employed in an alleged "trainee" capacity for the first two weeks to gain skills and experience relevant to the role;
 - (e) The terms and conditions of ATM's employees are governed by the Cleaning Services Award 2010 (MA000022) (**Cleaning Services Award**). ATM is excluded from the Hospitality Industry (General) Award (**Hospitality Award**) due to clause 4.1(k) - because they do not operate exclusively in the hospitality industry.
 - (f) ATM's employees were engaged in the following classifications of the Cleaning Services Award:
 - (i) Cleaning Service Level 1 – "Room Attendant"
 - (ii) Cleaning Service Level 2 – "Self-Checker"

7. An assessment of the records provided for the period June 2014, highlighted various contraventions of the FW Act and the Cleaning Services Award involving ATM employees engaged at Starwood Hotels.

Contraventions

8. The FWO has determined, and ATM admits, that ATM contravened section 45 of the FW Act by failing to comply with the following provisions of the Cleaning Services Award:
 - (a) Clause 16.1 by failing to pay the applicable minimum rates of pay;
 - (b) Clause 17.11 by requiring its employees to pay for uniforms, in this instance, replacement name badges;
 - (c) Clause 27.2(a) by failing to pay the applicable penalty rates for Saturday work;
 - (d) Clause 27.2(b) by failing to pay the applicable penalty rates for Sunday work;
 - (e) Clause 27.3(b) by failing to pay the applicable penalty rates for Public Holiday work.
10. The FWO has determined, and ATM admits, that ATM contravened the following sections of the FW Act and FW Regulations 2009 (**FW Regs**):
 - (a) Section 323 of the FW Act by failing to comply with correct application of authorised deductions in accordance with Section 324 of the FW Act. Specifically, stipulating in writing that an employee who fails to complete six months of service will have two weeks (or 10 days) wages deducted from their wages;
 - (b) Section 535 (1) of the FW Act by failing to keep correct content of records as prescribed by Regulation 3.32(d) of the FW Regs, specifically, failing to maintain records relating to an employee's status of employment.

Commencement of Undertaking

11. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by ATM; and
 - (b) the FWO accepts the Undertaking so executed.
12. Upon the commencement of this Undertaking, ATM undertakes to assume the obligations set out below.

Undertakings

13. For the purposes of section 715 of the FW Act, ATM undertakes to:

Rectify the underpayments

- (a) Conduct a self-audit within twenty eight days of execution of this Undertaking to identify any contraventions of relevant Commonwealth of Australia Workplace Relations Laws for the employees currently and previously employed by ATM from the pay period commencing 1 June 2014 including unlawful deductions, entitlements to casual loadings, Saturday penalty rates, Sunday penalty rates and Public Holiday penalty rates;
- (b) Pay to the Affected Employees referred to in (a), within fifty six days of the execution of this Undertaking, the outstanding amounts as calculated on the correct rates of pay from the period commencing 1 June 2014;
- (c) Pay to the Affected Employees referred to in (a), within fifty six days of the execution of this Undertaking, any outstanding amounts for deductions made from their wages in relation to failing to complete six months employment, misplaced nametags and similar unauthorised deductions made by ATM from 1 June 2014;

- (d) Within seven days of each payment being made to an Affected Employee as per paragraphs (b) and (c) above, provide the methodology of the calculations and reasonable evidence to the FWO that these Payment/s have been made;
- (e) If an affected Employee cannot be located, within one month of the payment falling due, pay any outstanding amount into the consolidated revenue of the Commonwealth of Australia (through the FWO), in accordance with section 559 of the FW Act, to be held on trust for the relevant Employee;
- (f) Immediately cease practices relating to deductions from employees' wages for costs including, but not limited to, nametags, uniforms, business property except in the case of wilful misconduct;

Apology

- (g) Prepare a letter apologising for the Contraventions to all Affected Employees in the form of Attachment A to this Undertaking (**Apology Letters**) and attach to their pay slip within forty two days of the execution of this Undertaking. Within seven days of distribution of the Apology Letters, submit a sample copy of an Apology Letter to the FWO and written details of when each Apology Letter was provided to each Affected Employee;

Recordkeeping – employment status

- (i) Create and maintain records that set out each current employee's status of employment;
- (j) Within 14 days of the execution of this Undertaking, provide a copy of this record to the FWO;

Recordkeeping – Letter of Introduction

- (k) Amend current Letter of Introduction to include, at a minimum, the correct rates of pay, applicable instrument, classifications and status of employment. Alternatively, utilise the resources from the FWO's website and customise the "Letters of Engagement" templates;
- (l) For part-time employees, ensure their letters reflect clause 12.4 of the Cleaning Services Award concerning the hours of work to be agreed to in writing prior to commencement with ATM;
- (m) Remove references relating to deductions from wages for failing to complete work timeframes as appearing in the current "Letter of Introduction";
- (n) Within fourteen days of the execution of this Undertaking provide the FWO with a copy of the amended "Letter of Introduction" (or alternative Letter) including a version for the future engagement of any part-time employees;

Recordkeeping – Fair Work Information Statement

- (o) Provide to all current Employees a copy of the Fair Work Information Statement where they have yet to receive a copy. Copies of the Fair Work Information Statement in English and other languages are available on the FWO website at www.fairwork.gov.au;
- (p) Within fourteen days of the execution of this Undertaking provide the FWO with a document evidencing the actioning of paragraph (o) above;
- (q) Ensure that all future employees are provided with a copy of the Fair Work Information Statement and that ATM maintains records of this activity;
- (r) Ensure that those Employees whose English is not of a reasonable standard to be able to read are provided with copies of the Fair Work Information Statement in their respective languages. Where a copy is not available in their respective language, ATM shall provide them with a copy in the English language and obtain a written undertaking that the document has been translated to them by someone they know

who speaks both languages.

Future workplace relations compliance

- (s) Ensure compliance at all times and in all respects with applicable Commonwealth of Australia Workplace Relations Laws and instruments, including but not limited to the Cleaning Services Award and the FW Act 2009, by developing systems and processes to ensure ongoing compliance with those requirements;
- (t) Provide to the FWO, within twenty eight days of the execution of this Undertaking, written detail of the systems and processes implemented in satisfaction of the undertaking in paragraph (s) above designed to ensure such ongoing compliance;

Workplace relations training

- (u) Within three months of the execution of this Undertaking, organise and ensure training for all persons engaged by ATM who have managerial responsibility for human resources, recruitment/termination or payroll functions (**Training**);
- (v) Within three months of the execution of this Undertaking, provide the FWO with written details of Training undertaken including names of the courses, dates Training was undertaken, and names of participants;
- (w) Ensure the Training relates to compliance with all applicable Commonwealth of Australia Workplace Relations Laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Cleaning Services Award;
- (x) In addition to any external Training, within three months of the execution of this Undertaking ensure persons referred to in paragraph (u) review relevant education material available on the FWO website and as a minimum, complete educational activities as set out in Attachment B and ensure a copy of each Attachment B completed is provided to the FWO, along with requested supplementary documentation;
- (y) Ensure within fourteen days of the execution of this Undertaking, ATM has actioned the following activities with the FWO website:
 - i. Register for "My Account"
 - ii. subscribe to the bi-monthly employer newsletter
 - iii. subscribe to the pay rate update alert RSS feed for the Cleaning Services Award
- (z) Provide to the FWO a completed Attachment C within 7 days of completion of the activities outlined in paragraph (y) above.

Future audits

- (a1) Cause to have performed by an accounting professional (for example, a Certified Practising Accountant) or an employment law specialist, at ATM's expense, audits of ATM's compliance with all applicable Commonwealth of Australia Workplace Relations Laws and instruments, including but not limited to the Cleaning Services Award and the FW Act, relating to pay and conditions of at least 30% of all employees of ATM (**Audit**), for each year in a three year period as follows:
 - i. The Audit for the calendar year 2015 is to be finalised by 28 February 2016;
 - ii. The Audit for the calendar year 2016 is to be finalised by 28 February 2017;
- (a2) Provide to the FWO, at least fourteen days prior to the commencement of an Audit being undertaken, the methodology to be used for the purpose of the Audit for approval by the FWO;
- (a3) Provide to the FWO, within fourteen days of each finalised Audit, details of the

methodology used to conduct the Audit and the outcomes of the Audit;

- (a4) In the event an Audit discloses contraventions of any applicable Commonwealth of Australia Workplace Relations Laws and instruments, rectify all such contraventions within fourteen days of the finalised Audit including rectification of any and all underpayments to employees;
- (a5) Provide evidence of rectification in relation to paragraph (a1) above to the FWO within fourteen days of the finalised Audit.

Future complaints

- (a6) Where contacted by current or former employees not covered by this Undertaking alleging that their lawful entitlements have not been met, ATM agrees to:
 - i. notify the FWO within seven days of receiving the allegation;
 - ii. take all reasonable steps to ascertain whether a contravention/s of the FW Act has occurred, and where such contravention/s have been found and take immediate steps to rectify the contravention/s;
 - iii. within seven days of resolving the allegation, provide the FWO with evidence that any identified underpayments have been paid and evidence that other issues identified have been resolved; and
 - iv. should a decision be made not to rectify an issue raised by an allegation, notify the FWO within 7 days of this decision the reasons for not rectifying.

Broader community workplace relations education

- (a7) Make a donation of \$2,000.00 to CLEANING ACCOUNTABILITY FRAMEWORK INC within fourteen days of the execution of the Undertaking with the objective of assisting the promotion of compliance with Commonwealth of Australia Workplace Relations Laws in the cleaning industry.
- (a8) Provide proof of the payment referred to in to the FWO within seven days of it being made.

Acknowledgements


ATM 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.fwo.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 of Australia Workplace Relations obligations by ATM;
- (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 ATM has contravened any of the terms of this 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, ATM may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by ATM Cleaning Management Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

micky AN

(Name of director)


19/12/14

(Date)

in the presence of:

GEORGE SAITANIS

(Signature of witness)



(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:



FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

22 DECEMBER 2014

(Date)

PIA MORGAN

(Name of Witness)

Attachment A – Letter of Apology

FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

Date

Employee Name and address

Dear _____

The purpose of this letter is to apologise on behalf of ATM Cleaning Management Pty Ltd (ATM) for non-compliance with Commonwealth of Australia Workplace Relations Laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that ATM had contravened the Fair Work Act 2009 (FW Act) by failing to pay its employees the following entitlements under the Cleaning Services Award 2010 (the Cleaning Services Award):

- minimum rates of pay;
- penalty rates for work performed outside the normal spread of hours;
- penalty rates for work performed on a Saturday;
- penalty rates for work performed on a Sunday;
- penalty rates for work performed on a Public Holiday
- deductions for uniforms;

Regrettably, the investigation determined that you were affected by the above contraventions. ATM is taking steps to remedy the contraventions, including by rectifying \$_____ that you have been underpaid.

You will/have receive/d this payment on (date) and will be provided with payment advice (payslip) regarding the payment.

ATM has formally admitted to the FWO that it did not comply with its obligations under Commonwealth of Australia Workplace Relations Laws and have entered into an Enforceable Undertaking under the FW Act with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au.

As part of the Enforceable Undertaking, ATM has committed to a number of measures to ensure future compliance with Commonwealth of Australia Workplace Relations laws.

ATM expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Micky An, General Manager on _____.

Yours sincerely

ATM Cleaning Management Pty Ltd

Attachment B

TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, _____ have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date completed: _____
- Hiring employees date completed: _____
- Managing performance date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

** Please provide printout of the Statement/Certificate of Attainment for each course completed*

Viewed Videos including:

- Welcome to fairwork.gov.au date completed: _____
- Finding information for your industry date completed: _____
- My account date completed: _____
- Leave Calculator date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- International Students date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

Read information on the following:

- **Pay Overview**
- Minimum wages Page Ref No. _____ date completed: _____
- Penalty rates & allowances Page Ref No. _____ date completed: _____

- **Leave Overview**

- Annual leave Page Ref No. _____ date completed: _____
- Sick & carer's leave Page Ref No. _____ date completed: _____

- **Ending Employment Overview**

- Notice & final pay Page Ref No. _____ date completed: _____
- Unfair dismissal Page Ref No. _____ date completed: _____

- **Employee Entitlements Overview**

- Types of employees Page Ref No. _____ date completed: _____
- National Employment Standards Page Ref No. _____ date completed: _____

- **Awards & Agreements Overview**

- Awards Page Ref No. _____ date completed: _____

- **Other educational material utilised**

Date and signature

Attachment C

FAIR WORK OMBUDSMAN WEBSITE – SUBSCRIPTIONS

I, _____, on behalf of ATM have undertaken the following activities:

- Registered for “My Account”
- Subscribed to the bi-monthly employer newsletter
- Subscribed to the pay rate update alert RSS feed for the following Awards:
 - Cleaning Services Award

