

**ENFORCEABLE UNDERTAKING**

Between

The Commonwealth of Australia

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

and

Fine Food Gallery Pty Ltd

(ACN: 160602102)

*Fair Work Act 2009*

**Section 715 Enforceable Undertaking**

**Parties**

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Fine Food Gallery Pty Ltd (ACN: 160602102) (**Fine Food Gallery**) trading as Sushi Izu for the purposes of section 715 of *the Fair Work Act 2009* (**FW Act**).

**Commencement of Undertaking**

1. This Undertaking comes into effect when:
	1. the Undertaking is executed by Fine Food Gallery; and
	2. the FWO accepts the Undertaking so executed.
2. Upon the commencement of this Undertaking, Fine Food Gallery undertakes to assume the obligations set out below.

**Background**

1. Fine Food Gallery operates two (2) Sushi Izu Franchises operating within Woolworths stores located at corner of Park and George streets, Sydney and in Double Bay, New South Wales.
2. Fine Food Gallery employees prepare, pack and display Sushi Izu branded sushi in the Sushi Izu display fridges and the Woolworths fresh food display fridges. Customers select their sushi and pay at the Woolworths cash registers.
3. A request for assistance was made to the FWO regarding Fine Food Gallery, Sydney City store on 31 March 2014. Fine Food Gallery employed the employee between 12 December 2013 and 26 February 2014 (the **Employment Period**).
4. The employee was employed on a full time basis. His duties included preparing ingredients, making sushi, packaging sushi and general cleaning duties.
5. During the Employment Period, the employee’s terms and conditions of employment were governed by the *Fair Work Act* 2009 (FW Act) and the *Fast Food Industry Award* 2010 (**Fast Food Award**). Transitional rates of pay in the Award were calculated by reference to the Transitional Award *Shop Employees (State) Award* (**Transitional Award**).
6. Fine Food Gallery underpaid the employee for his work by failing to pay the correct minimum hourly rates of pay in accordance with the Fast Food Award. The underpayments arose as a result of underpaying rates of pay including all hours worked on week days Monday to Friday, Saturday, Sunday and Public Holidays.

**Contraventions**

1. The FWO has determined, and Fine Food Gallery admits, that Fine Food Gallery contravened:

*Wages*

* 1. subsection 45 of the FW Act by failing to pay the employee his correct minimum base hourly rate of pay in accordance with clause 17 and clause A.3.6 of Schedule A of the Fast Food Award.

*Saturday Penalty Rates*

* 1. subsection 45 of the FW Act by failing to pay the employee the correct penalty rate for time worked on Saturdays in accordance with clause 25.5 (b) and clause A.7 of Schedule A of the Fast Food Award.

*Sunday Penalty Rates*

* 1. subsection 45 of the FW Act by failing to pay the employee the correct penalty rate for time worked on Sundays in accordance with clause 25.5 (c) and clause A.7 of Schedule A of the Fast Food Award.

*Public Holiday Penalty Rates*

* 1. subsection 45 of the FW Act by failing to pay the employee the correct penalty rate for time worked on Public Holidays in accordance with clause 30.3 and clause A.7 of Schedule A of the Fast Food Award.

*Evening work Penalty rate*

* 1. subsection 45 of the FW Act by failing to pay the employee the correct penalty rate for time worked between 09:00 pm and 06:00 am Monday to Friday in accordance with clause 25.5(a). and clause A.7 of Schedule A of the Fast Food Award.

*Overtime*

* 1. subsection 45 of the FW Act by failing to pay the employee the correct overtime rates for time worked on Public Holidays in accordance with clause 26 of the Fast Food Award.

*Annual leave*

* 1. subsections 45 and 90(2) of the FW Act by failing to pay the employee the accrued annual leave in accordance with clause 28.1 of the Fast Food Award.

*Annual leave*

* 1. subsections 45 and 90(2) of the FW Act by failing to pay the employee the accrued annual leave loading in accordance with clause 28.3 of the Fast Food Award.

*Pay slips*

* 1. section 536 of the FW Act by failing to provide the employee with a pay slip in accordance with the section 536 and the FW Act.

(collectively the **Contraventions**)

1. As a result of the Contraventions, the employee was underpaid $5,008.34.

**Commencement of Undertaking**

1. This Undertaking comes into effect when:
	1. the Undertaking is executed by Fine Food Gallery; and
	2. the FWO accepts the Undertaking so executed.
2. Upon the commencement of this Undertaking, Fine Food Gallery undertakes to assume the obligations set out below.

**Undertakings**

1. For the purposes of section 715 of the FW Act, Fine Food Gallery undertakes to:

*Rectify Underpayments*

1. pay the amount of **$5,008.34** less taxation to the employee arising from the Contraventions within 21 days of the execution of this Undertaking.
	* 1. within 28 days of the execution of this Undertaking, provide evidence of payment to the FWO.
2. self-rectify on a voluntary basis within 60 days any additional wage disputes received by and to the satisfaction of the FWO in the event the Company admits such contraventions.

*Public Notices*

1. place a notice within the workplace which is accessible to all employees (**Workplace Notice**) within 28 days of the execution of this Undertaking for a total consecutive period of seven (7) days in the terms set out in Attachment A.
	* 1. provide a copy of the **Workplace Notice** and photographic evidence of its display to the FWO within seven (7) days of the display of the notice.

*Apology*

1. send an apology to the employee in the terms set out in Attachment B.

*FWO My Account Registration*

1. within seven (7) days of the execution of this undertaking, register with the FWO ‘My Account’ portal at [www.fairwork.gov.au](http://www.fairwork.gov.au/) and have completed the profile, minimum pay rates and Award options.
	* 1. within 14 days of the execution of the Undertaking provide to the FWO the Fine Food Gallery ‘My Account’ registration number.
		2. within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Fair Work Inspector via [www.fairwork.gov.au](http://www.fairwork.gov.au/) ‘My Account’ current Fast Food Award minimum pay rates and Saturday, Sunday and Public Holiday penalty rates of pay.

*Future Workplace Relations Compliance*

1. ensure that it complies at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) and the Fast Food Award;

*Self-audits and Reporting*

1. have completed by an external accounting professional (e.g. Certified Practicing Accountant), audit specialist or employment law specialist (at the expense of Fine Food Gallery), an audit of its compliance with Commonwealth workplace laws at six (6) months and again at twelve (12) months from the execution of this Undertaking. Specifically:
	* 1. Fine Food Gallery must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
		2. the audit is to include the one (1) full single pay period after the commencement of the sixth and twelfth month of the execution of this Undertaking; and
		3. Fine Food Gallery must provide a copy of the audit to the FWO within seven (7) days of its completion.

**Acknowledgements**

1. Fine Food Gallery acknowledges that:
2. 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](http://www.fairwork.gov.au/) (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
3. the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
4. 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;
5. 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 Fine Food Gallery;
6. 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;
7. if the FWO considers that Fine Food Gallery 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;
8. consistent with section 715(3) of the FW Act, Fine Food Gallery may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

Executed by Fine Food Gallery Pty Ltd (ACN: 160602102) in accordance with section 127(1) of the *Corporations Act 2001*:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| (Signature of director) |  | (Signature of director/company secretary) |
|  |  |  |

(Name of director) (Name of director/company secretary)

|  |  |  |
| --- | --- | --- |
|  |  |  |

(Date) (Date)

in the presence of: in the presence of:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| (Signature of witness) |  | (Signature of witness) |
|  |  |  |

(Name of witness) (Name of witness)

|  |
| --- |
| Accepted by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009* on: |
| Steven RonsonExecutive DirectorDispute Resolution and ComplianceDelegate for the FAIR WORK OMBUDSMAN |  | (Date) |
| in the presence of: |  |  |
| (Signature of witness) |  | (Name of Witness) |

**Attachment A – Form of Workplace Notice**



**Contraventions of the *Fair Work Act 2009* andthe**

***Fast Food Industry Award 2010* by Fine Food Gallery Pty Ltd**

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Fine Food Gallery trading as Sushi Izu (**Fine Food Gallery**) contravened the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* (**Fast Food Award**).

Fine Food Gallery owns and operates two (2) Sushi Izu Franchises operating within Woolworths stores located at corner of Park and George streets, Sydney and in Double Bay, New South Wales. No previous contraventions of Commonwealth workplace laws have been determined against Fine Food Gallery.

The FWO has found that Fine Food Gallery contravened the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* by:

1. failing to pay an employee their correct minimum base hourly rates of pay for time worked Monday to Friday;
2. failing to pay an employee penalty rates for time worked on Saturdays;
3. failing to pay an employee penalty rates for time worked on Sundays;
4. failing to pay an employee penalty rates for time worked on Public Holidays;
5. failing to pay an employee penalty rates for time worked in the evening;
6. failing to pay an employee overtime rates for hours worked outside of ordinary hours;
7. failing to pay an employee annual leave and annual leave loading on termination; and
8. failing to provide an employee a payslip within one business day of wage payments.

Fine Food Gallery has formally admitted to the FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://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 and changing workplace practices.

Fine Food Gallery expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Fine Food Gallery 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 Fine Food Gallery and have queries or questions relating to your employment, please contact Ms Jennfier Yu in the first instance on telephone 0433 811 120 or by email at afc.jennifer@hotmail.com.

Anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au/) or the Infoline on 13 13 94 to check their rates of pay and Restaurant Award terms and conditions.

Ms Jennifer Yu

Director – Fine Food Gallery Pty Ltd

Attachment B – Form of Apology

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2014

Dear,

I am writing to apologise on behalf of Fine Food Gallery (the Company) for the 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* and the *Fast Food Industry Award 2010*.

The FWO has found that Fine Food Gallery contravened the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* by:

1. failing to pay an employee their correct minimum base hourly rates of pay for time worked Monday to Friday;
2. failing to pay an employee penalty rates for time worked on Saturdays;
3. failing to pay an employee penalty rates for time worked on Sundays;
4. failing to pay an employee penalty rates for time worked on Public Holidays;
5. failing to pay an employee penalty rates for time worked in the evening;
6. failing to pay an employee overtime rates for hours worked outside of ordinary hours;
7. failing to pay an employee annual leave and annual leave loading on termination; and
8. failing to provide an employee a payslip within one business day of wage payments.

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

The Company is taking steps to remedy the contraventions, including paying $5,008.34 (less taxation) that you have been underpaid. You will receive this payment on \_\_\_\_\_\_ October 2014 and will be provided with payment advice regarding the payment.

The Company have formally admitted to the FWO that the Company did not comply with its 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](http://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 expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact me on 0433 811 120 or by email at afc.jennifer@hotmail.com.

Yours sincerely,

**Ms Jennifer Yu**

**Director – Fine Food Gallery Pty Ltd**