



*Fair Work Act 2009*

### Section 715 ENFORCEABLE UNDERTAKING

#### Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Mizuno Trading Company Pty Ltd (ACN: 128 888 264) (**Mizuno**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

#### Commencement of Undertaking

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

#### Background

4. Mizuno operates two fast food sushi kiosks located in the Cairns central business district selling to retail customers trading under the business name Fuji Homestyle Cuisine.
5. In or about May 2008, Mizuno opened its first fast food sushi kiosk on the first floor of the Cairns Central shopping centre located on the corner of McLeod Street and Spence Street, Cairns, Qld, 4870 (**Cairns Central**).
6. In or about October 2012, Mizuno opened a second fast food sushi kiosk also on first floor of Cairns Central.
7. Mizuno employed five (5) employees subject to this Undertaking and as referred to in the FWO Amended Letter of Findings dated 26 February 2014 (collectively the **Employees**) on or after 1 April 2013, being:
  - (a) [REDACTED]
  - (b) [REDACTED]
  - (c) [REDACTED]
  - (d) [REDACTED]
  - (e) [REDACTED]
8. The Employees were employed as casual fast food employees. Their duties included preparing and selling Japanese style food to retail customers, cooking food, cleaning and taking customer payments.
9. Mizuno operates the two kiosks seven (7) days per week including public holidays. The trading hours of Mizuno are Monday to Wednesday 9.00 am to 5.30 pm, Thursdays 9.00 am to 9.00 pm, Friday and Saturday 9.00 am to 5.30 pm and Sundays 10.30 am to 4.00 pm. The Employees worked a combination of shifts across the operating hours.

10. Mizuno underpaid the Employees for their work by failing to pay the correct minimum hourly rates of pay. The underpayments arose as a result of paying a flat rate of pay for all hours worked including those worked on Saturday, Sunday and Public Holidays.

### **Contraventions**

11. The FWO has determined, and Mizuno admits, that Mizuno contravened:

#### *Wages*

- (a) subsection 45 of the FW Act by failing to pay the Employees their correct minimum hourly rate of pay in accordance with clause 17 and Schedule A of the *Fast Food Industry Award 2010 (Award)*;

#### *Casual Loading*

- (b) subsection 45 of the FW Act by failing to pay the Employees a casual loading in accordance with clause 13.2 and clause A.4 of Schedule A of the Award;

#### *Saturday Penalty Rates*

- (c) subsection 45 of the FW Act by failing to pay the Employees penalty rates for time worked on Saturdays in accordance with clause 25.5(b) and clause A.4 of Schedule A of the Award;

#### *Sunday Penalty Rates*

- (d) subsection 45 of the FW Act by failing to pay the Employees penalty rates for time worked on Sundays in accordance with clause 25.5(c) and clause A.4 of Schedule A of the Award;

#### *Public Holiday Penalties*

- (e) subsection 45 of the FW Act by failing to pay the Employees penalty rates for time worked on Public Holidays in accordance with, clause 30.3(a) and clause A.4 of Schedule A of the Award; and

#### *Pay Slips*

- (f) subsection 536(1) of the FW Act by failing to give each of its employees a pay slip within one (1) day of payment of wages.

(collectively the **Contraventions**)

12. As a result of the Contraventions, the employees were underpaid:

(a)	████████████████████	\$ 9,845.41
(b)	████████████████████	\$ 8,229.56
(c)	████████████████████	\$12,177.84
(d)	████████████████████	\$ 7,285.99
(e)	████████████████████	\$10,185.39

### **Undertakings**

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

#### *Rectify Underpayments – The Employees*

- (a) pay the amounts as listed in the FWO Amended Letter of Findings dated 26 February 2014 to the Employees arising from the Contraventions as:

- (i) an upfront payment of \$20,000.00, within seven (7) days of the execution this Undertaking providing evidence of payment to the FWO within seven (7) days of payment; and
- (ii) the remaining balance be paid over a fourteen month period by way of equal monthly instalments from the date of execution of this Undertaking providing evidence of each payment to the FWO within seven (7) days of payment;

#### *Public Notices*

- (b) place a notice within the workplace which is accessible to all employees (**Workplace Notice**) within 28 days of the execution this Undertaking for a total consecutive period of seven (7) days in the terms set out in Attachment A;
- (c) 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;

#### *Future Workplace Relations Compliance*

- (d) provide the FWO, within 28 days of the date of the execution of this Undertaking, details of systems and processes already in place or to be implemented to ensure ongoing compliance with Commonwealth workplace laws and instruments, including but not limited to the *Fast Food Industry Award 2010* and the *Fair Work Act 2009*;
- (e) develop and implement demonstrable systems and processes in relation to:
  - (i) payroll systems to ensure ongoing compliance in relation to the contraventions including rates of pay, loading and penalties;
  - (ii) issuing pay slips to each of Mizuno's employees within one (1) day of payment;
  - (iii) record keeping in relation to employee records, including but not limited to, basic employee details including, personal details, nature of the employment (full time, part time or casual), taxation and superannuation;

#### *Self-audits and Reporting*

- (f) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at Mizuno's own expense), six (6) monthly for two (2) years of the execution of this Undertaking, an audit of its compliance with Commonwealth workplace laws. Specifically:
  - (i) Mizuno must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
  - (ii) each audit is to include the first full single pay period at the commencement of each quarter; and
  - (iii) Mizuno must provide a copy of the audit to the FWO within seven (7) days of its completion;

#### *Workplace Relations Training*

- (g) provide or design and implement within 90 days of the commencement of this Undertaking, an ongoing training program so that all persons responsible, either directly or indirectly, are made aware of Mizuno's obligations under Commonwealth workplace laws;
- (h) provide training material to participants in the training including material on:
  - (i) compliance with the FW Act, Fair Work Regulations and the Award;
  - (ii) employer obligations in respect to employee record keeping and pay slips;
  - (iii) options available to persons to make complaints and FWO contact information;

and

- (iv) access to FWO resources to calculate rates of pay;

### **Acknowledgements**

14. Mizuno 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](http://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 workplace relations obligations by Mizuno;
- (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 Mizuno 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, Mizuno may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

EXECUTED by Mizuno Trading Company Pty Ltd (ACN: 128 888 264) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

SHACHI MIZUNO

(Name of director)

(Name of director/company secretary)

18 March 2014

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

LISA MANNERING

(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 Ronson  
Executive Director  
Dispute Resolution and Compliance

(Date)

21/3/2014

as delegate for the Fair Work Ombudsman  
subject to the instrument of delegation made  
pursuant to section 683 of the FW Act and  
executed by Nicholas Paul Wilson on 30  
January 2013.

in the presence of:



(Signature of witness)

PIA MORGAN

(Name of Witness)

## **Attachment A – Form of Workplace Notice**

Contravention of the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* by Mizuno Trading Company Pty Ltd.

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Mizuno Trading Company Pty Ltd trading as Fuji Homestyle Cuisine (**Mizuno**) contravened the *Fair Work Act 2009* and the *Fast Food Industry Award 2010*.

Mizuno owns and operates two (2) fast food sushi kiosks located in the Cairns central business district and no previous contraventions of Commonwealth workplace laws have been determined against Mizuno.

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

- failing to pay employees correct minimum hourly rates of pay for time worked Monday to Friday;
- failing to pay employees a casual loading for all hours worked;
- failing to pay employees penalty rates for time worked on Saturday;
- failing to pay employees penalty rates for time worked on Sunday;
- failing to pay employees penalty rates for time worked on Public Holidays; and
- failing to give each of its employees a pay slip within one (1) day of payment of wages.

Mizuno has formally admitted to the FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at [www.fwo.gov.au](http://www.fwo.gov.au)) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments to the employees affected by the contraventions and changing workplace practices.

Mizuno expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Mizuno 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 Mizuno and have queries or questions relating to your employment, please contact Mr Shoichi Mizuno in the first instance on 0408 812 968. Alternatively, 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.