



Australian Government

Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Pampost Pty Limited (ABN: 51 050 043 760)

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by Pampost Pty Limited trading as Bass Floor Company (Sydney) (the **Company**), ABN 51 050 043 760, ACN 050 043 760, of 183 Fairfield Road, Guildford West NSW 2161.

BACKGROUND:

2. The Company is carrying on a business within the commercial flooring industry.
3. The Company supplies and installs various commercial flooring products and operates from its office, showroom and warehouse collocated at 183 Fairfield Road, Guildford West, NSW. The Company engages employees to work in sales, estimating, installing and administration roles. At the time of making this Undertaking the Company employs a total of 13 employees.
4. In March 2016 the Company was audited as part of NSW - Western Sydney Regional Campaign.
5. The Company employs staff in various roles covered by the *Building and Construction General On-site Award 2010*, *Storage Services and Wholesale Award 2010* and the *Clerks Private Sector Award 2010* (collectively, the **Relevant Awards**).
6. The FWO has determined, and the Company admits:
 - a) That the Company contravened clause 19.8 (c) of the *Building and Construction General On-Site Award 2010* by failing to pay the applicable minimum rate of pay (including all purpose allowances) to an adult apprentice floor layer;
 - b) The underpayment arising as a result of this contravention totals \$24,920.94 gross.
7. The Company has rectified the underpayment identified in paragraph 6(b) (less applicable tax) by making payment to the relevant employee.

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

8. This Enforceable Undertaking comes into effect when:
 - a) the Enforceable Undertaking is executed by the Company; and
 - b) the FWO accepts the Enforceable Undertaking so executed.

ENFORCEABLE UNDERTAKING

9. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company undertakes the following:

FWO My Account Registration

- a) Within 14 days of the execution of this Undertaking:
- (i) Register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options
 - (ii) Provide to the FWO the Company's 'My Account' Customer Registration Number (CRN).
- b) Within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Officer via www.fairwork.gov.au 'My Account' the current minimum rates of pay and overtime penalty rates for each of the Relevant Awards.
- c) Within three months of the execution of the Undertaking, subscribe to the following and provide evidence to the FWO of the subscriptions:
- (i) 'General information' email alerts from the FWO relating to the Relevant Awards, available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>
 - (ii) FWO's Employer newsletter for the relevant State and industry, available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>, selecting at least the following options:
 - i. pay updates;
 - ii. award updates;
 - iii. holiday updates;
 - iv. working hours and breaks; and
 - v. annual leave/sick leave.

Future workplace relations compliance

- d) Ensure that it complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the Relevant Awards;
- e) Provide the FWO, within 60 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with

paragraph (e) above. Without limitation, such systems and processes relating to:

- (i) Ensuring employees receive the correct minimum rates of pay and entitlements;
- (ii) Ensuring apprentice employees are paid at the correct base rate of pay and receive all applicable allowances.

Workplace relations training

- f) Within six months of the execution of this Undertaking ensure that all persons responsible for management, payroll and human resources functions complete the educational activities as set out in **Attachment A** from the FWO website, within 28 days of taking responsibility of these functions. Record the names, position of those who have completed the activities and the dates the activities were completed on Attachment A and provide to the FWO within 35 days of taking responsibility for these functions.

Apology

- g) Send a letter of apology (**Apology Letter**) to the employee referred to in paragraph 6 in the form of **Attachment B** to this Undertaking and provide a copy to the FWO within 14 days of the execution of this Undertaking.

Audit Activity

- h) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at the Company's expense, audits of the Company's compliance with all Commonwealth workplace laws and instruments (Audits), relating to the pay and conditions of all employees as follows:
 - (i) The Audit of 1 July 2016 to 30 June 2017 is to be finalised by 30 September 2017;
 - (ii) The Audit 1 July 2017 to 30 June 2018 is to be finalised by 30 September 2018
- i) Provide to the FWO within 14 days of each of the finalisation dates specified in subclause 9(h)(i) and (ii) (**the finalisation dates**) above details of the methodology used to conduct the Audit and a report on the outcomes of the Audit;
- j) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 14 days of each of the finalisation dates, including rectification of any and all underpayments to

employees and provide evidence of rectification to the FWO;

- k) If any employee(s) identified as having underpayments owing to them cannot be located, within 14 days of each of the finalisation dates, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund. The Company will complete the required documents supplied by the FWO.

Workplace Notice

- l) Within 14 days of the execution of this Undertaking, cause to be displayed within the workplace controlled by the Company a notice in the form of **Attachment C** to this Undertaking (**Workplace Notice**) and provide photographic evidence of its display:
- (i) Ensure that the Workplace Notice is printed in at least A4 size and is clearly displayed:
- i. In a location to which all employees who work for the Company have access;
 - ii. In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard);
 - iii. For a period of 14 continuous days

No Inconsistent Statements

10. The Company:

a) must not; and

b) must ensure that each of its officers, employees or agents, do not,

make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this Undertaking.

ACKNOWLEDGEMENTS

11. The Company acknowledges that:





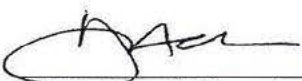
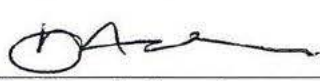
a) The FWO may;

- (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;

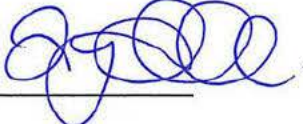
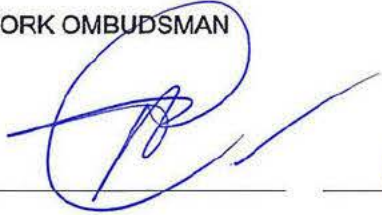
- (ii) release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the Freedom of Information Act 1982 (Cth);
 - (iii) issue a media release in relation to this Undertaking;
 - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
 - (v) rely upon the admissions made by the Company set out in paragraphs 2 to 6 above in respect of decision making concerning any future non-compliance with the Company's workplace relations obligations.
- b) 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 herein;
- c) Consistent with section 715(3) of the FW Act, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- d) If the Company contravenes any of the terms of this Enforceable Undertaking:
- (i) 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; and
 - (ii) This Enforceable Undertaking may be provided to the Court as evidence of the admissions made by the Company in paragraphs 2 to 5 above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by Pampost Pty Ltd 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)
15/8/16. _____ (Date)	15/8/16. _____ (Date)
in the presence of:	in the presence of:
 _____ (Signature of witness)	 _____ (Signature of witness)
DONNA ADAMS _____ (Name of witness)	DONNA ADAMS. _____ (Name of witness)

ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:

Lynda McAulory-Smith Exec Director _____ [Insert name and role of Delegate]	PETE 16/8/2016 _____ (Date)	
Delegate for the FAIR WORK OMBUDSMAN		
in the presence of:		
ROB HORIWE  _____	16/8/16 _____	

Attachment A

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: _____
- Managing employees date completed: _____
- Diversity and discrimination date completed: _____
- Workplace flexibility 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: _____
- Introduction to the Pay and Conditions Tool date completed: _____
- PACT – Award classifications date completed: _____
- PACT – Pay summary date completed: _____
- PACT – Penalty rates date completed: _____
- PACT – Shift calculator date completed: _____
- PACT – Allowances date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- Contractors and employees – what's the difference? 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: _____

- Date and signature: _____

Attachment B – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Pampost Pty Ltd for non-compliance with Commonwealth Workplace relations laws. A recent audit conducted by the Office of the Fair Work Ombudsman (FWO) determined that Pampost Pty Ltd had contravened the *Fair Work Act 2009* by:

- Failing to provide you with the correct rate of pay for an adult apprentice (including all applicable all-purpose allowances).

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

Pampost Pty Ltd is taking steps to remedy the contraventions, including by making back payment to you. You have received this payment on 8 June 2016 and have been provided with payment advice regarding the payment.

Pampost Pty Ltd have formally admitted to the FWO that they 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. As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

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

Should you have any questions, please contact [party to include contact details].

Yours sincerely

[Chief Executive Officer]

Attachment C – Workplace Notice

Contravention of Fair Work Act by Pampost Pty Ltd

We refer to the audit conducted by the Office of the Fair Work Ombudsman (**FWO**) which identified that Pampost Pty Ltd trading as Bass Floor Company (Sydney) contravened the *Fair Work Act 2009* by:

- Failing to provide the correct rate of pay to an adult apprentice employee.

Pampost Pty Ltd has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including by rectifying the underpayment.

Pampost Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Pampost Pty Ltd 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.