



Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

dated 3 JUNE 2010

Given by

**Cotton On Group Services Pty Ltd
(ACN 127 904 198)**

To

**The Commonwealth of Australia
(as represented by the Fair Work Ombudsman)**

concerning

- breaches of section 182 the *Workplace Relations Act 1996* (Cth)
- breaches of Regulations 19.4 and 19.11(2) of Chapter 2 of the *Workplace Relations Regulations 2006*

ENFORCEABLE UNDERTAKING

THIS ENFORCEABLE UNDERTAKING is given to the **Commonwealth of Australia** (as represented by the **Fair Work Ombudsman (FWO)**) by **Cotton On Group Services Pty Ltd (ACN 127 904 198)** of 14 Shepherd Court, Geelong North, Victoria, pursuant to section 715 of the *Fair Work Act 2009 (Cth)* (**FW Act**).

BACKGROUND:

- A. **Cotton On Group Services Pty Ltd (ACN 127 904 198)** carries on a business within the retail sales industry.
- B. Prior to 13 February 2008, employees of Cotton On Group Services Pty Ltd were employed by the following individual companies:
- (i) Cotton On Clothing Pty Ltd (ACN 052 130 462);
 - (ii) Cotton On Kids Pty Ltd (ACN 114 221 886);
 - (iii) Cotton On Body Pty Ltd (ACN 121 235 372);
 - (iv) Rubi Shoes Pty Ltd (ACN 128 170 749); and
 - (v) Factorie Pty Ltd (ACN 127 578 394).
- C. On 13 February 2008, Cotton On Group Services Pty Ltd, by way of transmission of business, became the employer of the transmitting employees from the companies listed at paragraph B(i) to B(v) above.
- D. Between 13 February 2008 and 9 December 2008, Cotton On Group Services Pty Ltd required retail employees in retail stores around Australia to attend staff training and staff meetings outside working hours. Retail employees were not paid for the training sessions and meetings. In failing to pay retail employees for the training sessions and meetings Cotton On Group Services Pty Ltd contravened ss. 182(1) of the *Workplace Relations Act 1996* ("WR Act").
- E. Cotton On Group Services Pty Ltd made records of the dates and times of the training sessions and meetings that they required staff to attend, but failed to maintain and keep records of staff attendance at the training sessions and meetings. In failing to maintain and keep such records, Cotton On Group Services Pty Ltd

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contravened the following provisions of the *Workplace Relations Regulations 2006* ("Regulations"):

- (i) Regulation 19.4 of Chapter 2 of the Regulations in failing to record and keep records in relation to employees who attended after-hours training; and
- (ii) Regulation 19.11(2) of Chapter 2 of the Regulations in failing to record the time spent by casual employees in after-hours training sessions as time worked.

F. On 19 June 2009 Cotton On Group Services Pty Ltd repaid a total of \$278,126.46 to 3289 employees nationally, these amounts represented underpayments that arose from Cotton On Group Services Pty Ltd's contravention of ss. 182(1) of the WR Act.

G. **Cotton On Group Services Pty Ltd (ACN 127 904 198)** admit the contraventions set out in paragraphs D, E(i) and (ii) above, and give the Enforceable Undertaking set out below to the FWO in relation to those contraventions.

1. ENFORCEABLE UNDERTAKING

COTTON ON GROUP SERVICES PTY LTD (ACN 127 904 198) UNDERTAKE that in consideration of the FWO agreeing not to apply for any orders under Division 2 of Part 4-1 of the FW Act in relation to the contraventions set out above (as evidenced by the FWO's acceptance of this Enforceable Undertaking endorsed at the foot hereof), it will:

- (a) ensure that it complies at all times and in all respects with the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth);
- (b) provide to all Cotton On retail stores within 28 days of executing this document, a the letter in the form of Attachment A to this Enforceable Undertaking signed by its Chief Executive Officer. The letter must be printed in at least A3 size and displayed on the premises at each Cotton On store for a period of at least 30 days:
 - (i) in a location to which all staff at each such store have access; and
 - (ii) in a manner which is reasonably capable of drawing the letter to the general attention of all staff (for example, by placement on a staff noticeboard).
- (c) within 28 days of executing this Enforceable Undertaking, cause to be placed on the Cotton On Facebook "wall" and Cotton On's website at

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www.cottonon.com.au, a notice which is in the form of Attachment B to this Enforceable Undertaking. The notice will remain on the Cotton On Facebook page and website for a period of at least 30 days;

- (d) ensure that each member of staff with responsibility for human resources management complete a quality Workplace Relations compliance programme or training, conducted by an accredited training body or as otherwise agreed in advance with the FWO, within 3 months of executing this Enforceable Undertaking;
- (e) provide a written report to the FWO at the end of each financial year, for the next three years, regarding the following matters:
 - (i) the wage rates and entitlements paid to each employee employed over the reporting period;
 - (ii) the classification (under the applicable industrial instrument) and employment status (casual, part-time, fulltime, trainee) of each employee employed over the reporting period; and
 - (iii) details of any proactive compliance measures implemented over the reporting period (for example attendance at relevant training or self auditing activities).

2. COMMENCEMENT OF ENFORCEABLE UNDERTAKING

This Enforceable Undertaking comes into effect when:

- (a) the Enforceable Undertaking is executed by Cotton On Group Services Pty Ltd (ACN 127 904 198); and
- (b) the FWO accepts the Enforceable Undertaking so executed.

3. ADMISSIONS, ACKNOWLEDGEMENT AND NO INCONSISTENT STATEMENTS

- (a) Cotton On Group Services Pty Ltd (ACN 127 904 198):
 - (i) admits that it contravened Commonwealth workplace laws as set out in paragraph D and E of the Background; and
 - (ii) acknowledges that there was:
 - A. sufficient evidence to commence; and
 - B. public interest which would have justified the FWO commencing,civil penalty proceedings in respect of the admitted contraventions.

- (b) Cotton On Group Services Pty Ltd (ACN 127 904 198):
- (i) must not; and
 - (ii) 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 either the admission or the acknowledgement in paragraph 3(a) (above).

4. FURTHER ACKNOWLEDGEMENTS

Cotton On Group Services Pty Ltd (ACN 127 904 198) acknowledge that:

- (a) this Enforceable Undertaking is given and accepted by the FWO pursuant to section 715 of the FW Act;
- (b) the FWO may:
 - (i) make this Enforceable Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fwo.gov.au;
 - (ii) release a copy of this Enforceable 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 Enforceable Undertaking;
 - (iv) from time to time, publicly refer to the Enforceable Undertaking (and any of the Attachments hereto) and its terms;
 - (v) rely upon the admissions made by Group Services Pty Ltd (ACN 127 904 198) in paragraphs 1(a) to (f) above in respect of decision making concerning any future non-compliance with Cotton On Group Services Pty Ltd (ACN 127 904 198) workplace relations obligations.
- (c) consistent with the Note to ss. 715(4) of the FW Act, this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein; and
- (d) if Cotton On Group Services Pty Ltd (ACN 127 904 198) contravene any of the terms of this Enforceable Undertaking:
 - (i) the FWO may apply to any of the Courts set out in ss. 715(6) of the FW Act, for orders under ss. 715(7) of the FW Act;

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- (ii) this Enforceable Undertaking may be provided to the Court as evidence of the admissions made by Cotton On Group Services Pty Ltd (ACN 127 904 198) in paragraph G above, and also in respect of the question of costs; and
- (iii) this Enforceable Undertaking is withdrawn by Cotton On Group Services Pty Ltd (ACN 127 904 198) for the purpose of ss.715(4) of the WR Act.

Dated: 3 JUNE 2010

SIGNED for and on behalf of **Cotton On Group Services Pty Ltd (ACN 127 904 198)** in accordance with the requirements of section 127 of the *Corporations Act 2001(Cth)* by:



(Signature of Director)

NIGEL AUSTIN

(Name of Director)



(Signature of Director/Secretary)

ASHLEY HARDWICK

(Name of Director/Secretary)

ACCEPTED by the **FAIR WORK OMBUDSMAN**

Dated: 17th June 2010



NICHOLAS WILSON
FAIR WORK OMBUDSMAN

ATTACHMENT A

[Company letter head]

APOLOGY TO EMPLOYEES

Failure to pay for after-hours training and staff meetings during 2008

Dear Cotton On Employees,

I am writing to let you know about the outcome of a recent investigation by the Office of the Fair Work Ombudsman ("the FWO"), and to offer Cotton On's sincere apology to all employees for the unfortunate situation which was the subject of the FWO's investigation.

The FWO's investigation looked at how Cotton On failed to pay some of its staff for after-hours training sessions and staff meetings held during 2008. Following its investigation, the FWO alleged that Cotton On was in breach of workplace relations laws by not paying these staff members.

Cotton On has formally admitted to the FWO that it failed to pay a number of staff for after-hours training sessions and staff meetings during 2008, which it was required to pay under law. Cotton On also admitted that it failed to keep adequate records of after-hours training sessions and staff meetings, which it was also required to keep under law.

Happily for Cotton On and its many valued employees, in June 2009 Cotton On made payment to all staff who were affected in this case.

Cotton On expresses its sincere regret and apologises to all past and present employees for failing to comply with its lawful obligations. Furthermore, Cotton On gives its employees our commitment that the proscribed conduct will not occur again.

I thank you for your continued efforts and support.

Yours sincerely

Signature - CEO [Company name]

H. E. A.

ATTACHMENT B

Apology to Cotton On staff for breaches of workplace laws during 2008

The Office of the Fair Work Ombudsman ("the FWO") recently investigated allegations that Cotton On breached workplace laws during 2008. The allegations were that Cotton On failed to pay a number of employees for compulsory staff meetings and training sessions conducted outside normal work hours and also failed to keep adequate records of these staff meetings and training sessions.

Cotton On has formally admitted to the FWO that it did in fact breach workplace laws by:

- failing to pay a large number of retail employees for staff meetings and training sessions conducted after-hours between 13 February 2008 and 9 December 2008 and
- failing to make and keep records of the specific employees who attended after hours training sessions and meetings and the time employees spent at after hours training sessions and meetings.

An *Enforceable Undertaking* has been given by the Cotton On to the FWO to reflect these formal admissions (available at www.fwo.gov.au).

Happily for Cotton On and its many valued employees, in June 2009 Cotton On made payment to all staff who were affected in this case.

Cotton On expresses its sincere regret and apologises to all past and present employees for failing to comply with its lawful obligations. Furthermore, Cotton On gives its commitment that such conduct will not occur again and that it will comply with Commonwealth workplace relations laws.

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