

Underpayment of Wages

The Fair Work Ombudsman has recently concluded an investigation into a national retailer that resulted in that employer back-paying over 3,200 employees over \$278,000.00.

Background

Prior to February 2008, employees of Cotton On Group Services Pty Ltd ("**Cotton On**") were employed by one of five companies. On 13 February 2008, Cotton On, by way of a transmission of business, became the employer of the transmitting employees. Between 13 February 2008 and 9 December 2008, Cotton On required employees to attend staff training and/or staff meetings outside of the employees' ordinary working hours. However, employees who attended these meetings were not paid for their attendance.

Investigation

The Fair Work Ombudsman ("**FWO**") commenced an investigation into the employment practices utilised by Cotton On.

Admission

As a result of the FWO investigation, Cotton On admitted that they were in breach of Section 182 of the *Workplace Relations Act 1996*. Cotton On agreed to back pay the affected employees. In total, Cotton On back paid \$278,126.46 to 3,289 employees.

Cotton On also admitted to breaches of the *Workplace Relations Regulations 2006*, in particular Regulation 19.4 of Chapter 2 and 19.11(2) of Chapter 2.

Outcomes – Undertakings

On the basis that Cotton On agreed to enforceable undertakings, the FWO agreed not to prosecute Cotton On. Cotton On agreed to a number of enforceable undertakings. Cotton On is required to:

1. ensure that it complies with the *Fair Work Act 2009* and the *Fair Work Regulations 2009*;
2. provide to all Cotton On stores a written apology (in the form specified);
3. place on the Cotton Facebook site and the Cotton On website a different written apology;
4. ensure that all staff with responsibility for human resources management complete a quality Workplace Relations programme of training; and
5. for the next 3 years, provide a written report to the FWO.

Lessons for Employers

Employers who hold staff training, staff meetings or other similar attendances outside of an employee's ordinary hours should ensure that an employee who attends the staff training, the staff meeting, etc, are paid in accordance with the applicable industrial instrument – whether that be a modern award or a workplace agreement (that has been formally approved by the appropriate industrial authority).

Employers who do not pay employees who are required to attend staff training, staff meetings or other similar attendances outside of an employee's ordinary hours may, like Cotton On, be subject to an



investigation by the FWO and a possible requirement to back-pay employees. There are also risks of prosecution and penalties for such breaches.

Require further Information/Assistance?

Contact your local Consultant at either our Adelaide or Melbourne Offices.



workplace solutions through *i*nnovation

1st Floor, 82 Waymouth Street, Adelaide South Australia 5000

P 1800 175 159 **F** 08 8221 6660 thru.com.au

*Thru is wholly owned and operated by EMA Consulting Pty Ltd.
Products of thru are the property of EMA Consulting Pty Ltd.*

emaconsulting



South Australia

Level 1, 82 Waymouth Street
Adelaide SA 5000
Ph (08) 8221 6665
Fax (08) 8221 6660

Victoria

Level 5, 189 Flinders Lane
Melbourne VIC 3000
Ph (03) 9650 2800
Fax (03) 9650 8226