

23rd November 2018

Mr Stephen Palethorpe
Secretary
eec.sen@aph.gov.au

Dear Mr Palethorpe,

Re: Senate Education and Employment References Committee: Correspondence for Action

After reviewing the submissions from Ms Wallace and the queries from the Senate Committee, there are three main points that need to be addressed:

1. Is Pioneer the employer of the cleaners in question;
2. the calculations made; and
3. the personal leave claim.

We make the following comments to the above points:

1. Is Pioneer the employer of the cleaners in question?

Your email and Ms Wallace's submissions contain an error; Pioneer was not the employer of these cleaners. These cleaners were engaged by Dally Cleaning Pty Ltd trading as DC Enviro Services, a subcontractor of Pioneer's.

As a result of an audit performed in mid-October 2018, Pioneer discovered that DC Enviro Services was engaging these cleaners as subcontractors with their own ABN. This was in breach of DC Enviro Services' agreement with Pioneer, as Pioneer only allows one level of sub-contracting.

Pioneer also discovered that DC Enviro Services had been underpaying these cleaners because of this contracting arrangement (DC Enviro Services maintain that these cleaners agreed to be engaged as contractors and agreed on a weekly flat rate sum to perform the services). When DC Enviro Services was informed of the underpayments by Pioneer they advised Pioneer that they were not willing to pay the cleaners an amount that matched employee Award entitlements.

DC Enviro Services' contract was terminated, and Pioneer took steps to rectify the underpayments. We must stress that Pioneer is not obliged to reimburse employees of a separate legal entity and that the contract and underpayments (and any breaches of the Award) rest solely on DC Enviro Services. However, Pioneer chose to make payment to these two cleaners in this particular situation, as a gesture of good faith.

Pioneer also took steps to ensure (as much as is possible) that the cleaners were engaged by the new subcontractor, so as to not lose their jobs, as a result of DC Enviro Services' breach of its contract with Pioneer, and the resulting termination of the contract.

2. Calculations for rectification of subcontractor's underpayment

As part of the audit, Pioneer inspected the Woolworths sign-in/sign-out sheets for the store the cleaners worked at. These sheets revealed each cleaner was working on average 2.5 hours per day, 5 hours total (with some days, they were working as little as 1.5 hours). Calculations of underpayments were based on these sheets, on an average of 5 hours worked each day.

Ms Wallace has claimed further amounts are owing (for example in relation to further hours that were not documented on the sign-in/sign-out sheets). Pioneer understands that Ms Wallace is in discussions with Woolworths regarding the underpayments in order to reach a satisfactory resolution and outcome. Pioneer has not been privy to these discussions.

Pioneer can only rely on what material has been provided to them, in order to determine entitlements. If further information is available, it should be provided to Pioneer, so Pioneer can determine correct entitlement amounts. Ms Wallace has refused to provide to Pioneer her calculations and the basis of these calculations.

3. Personal leave

The submission from Ms Wallace states that personal leave is payable or transferrable. With respect, Ms Wallace is in error in this belief. Personal leave is not required to be paid out on termination under the relevant Award or the National Employment Standards. Personal leave is also not transferrable when the incoming subcontractor is not an associated entity of the outgoing subcontractor, and there has been no transfer of business.

Conclusion

As stated above, Pioneer has not been privy to the discussions between Ms Wallace and Woolworths and does not know what commercial resolution has been agreed to (which may include a payment or payments over and above Award entitlements).

Pioneer is committed to working with Woolworths to ensure the two cleaners are paid their full amount of wages and entitlements.

Yours sincerely,

Benjamin McGaw
Chief Executive Officer
Pioneer Facility Services Pty Ltd