

Brisbane Coffee Club franchisee faces Court over alleged unlawful cash-back payment

4 May 2017

A Coffee Club café franchisee in Brisbane is facing Court for allegedly requiring an overseas worker to repay \$18,000 of his wages by threatening to cancel his 457 skilled worker visa if he refused.

The Fair Work Ombudsman has commenced legal action against Brisbane man Saandeep Chokhani, who, with his wife, owns and runs the Coffee Club franchise at the Nundah Village Shopping Centre.

Also facing Court is a company Mr Chokhani and his wife are the directors of, Gaura Nitai Pty Ltd.

The allegedly underpaid worker is an Indian national in his late 20s who was sponsored by Gaura Nitai to work as a cook at the Coffee Club outlet on a 457 skilled worker visa.

It is alleged that the worker was promised an annual salary of \$53,900 when he was recruited but was paid significantly less and endured long periods without receiving any wages at all.

It is alleged that after failing to pay the worker any wages for a four-month period from July-to-November 2014 and a one-month period in February-March 2015, Mr Chokhani and Gaura Nitai paid the worker \$19,334 by electronic transfer on 22 April 2015.

It is alleged that Mr Chokhani then told the worker to withdraw \$18,000 in cash and repay it to him or his 457 visa would be cancelled.

The worker withdrew \$18,000 in cash the same day and repaid it to Mr Chokhani.

The worker lodged a request for assistance with the Fair Work Ombudsman only after his employment was terminated without notice in November 2015.

It is alleged that when Fair Work inspectors investigated, they found that because of the unlawful cashback payment, the worker had been underpaid his minimum hourly rates, casual loading, annual leave entitlements, overtime rates, payment in lieu of notice of termination and penalty rates for weekend and public holiday work.

It is alleged that the unlawful cashback payment and the underpayment of contractual entitlements led to the worker being short-changed a total of \$23,546 between September, 2013 and November, 2015. Fair Work Ombudsman Natalie James says the agency has a proactive compliance deed in place with the owners of the Coffee Club Franchise, Minor DKL Food Group (MDKL) and commended the company's cooperation through the course of the investigation.

"We are pleased that in this instance, the franchise owner presented our inspectors with documents to assist our investigation. It should be noted that we received these documents without the need to issue a Notice to Produce. MDKL is to be commended for its approach to ensuring compliance in its network," Ms James said.

The worker has now been back-paid in full.

Mr Chokhani faces maximum penalties of up to \$10,800 per contravention and Gaura Nitai Pty Ltd faces penalties of up to \$54,000 per contravention.

The Fair Work Ombudsman is also seeking Court Orders requiring Mr Chokhani to complete a range of self-education activities in the My Account portal and Online Learning Centre at www.fairwork.gov.au and for his company to conduct an assessment of its compliance with workplace laws and rectify any issues discovered.

A penalty hearing is scheduled for the Federal Circuit Court in Brisbane on 2 June.

Ms James says she has been concerned about the use of cashback arrangements in a number of matters.

The Fair Work Ombudsman recently commenced legal action against the operator of a Sydney café for allegedly requiring an overseas worker to unlawfully pay-back thousands of dollars of her wages. Read [Sydney Cafe operator faces Court over alleged cash-back scheme media release](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170215-robot-nominees-litigation-mr) (<http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170215-robot-nominees-litigation-mr>) .

The Federal Circuit Court recently ordered record penalties of \$532,000 against an Albury café owner and his business in a case involving two Indian workers who were coerced into paying back large portions of their wage to their employer. The workers were threatened with violence and deportation if they refused. Read [Record penalties of \\$532,000 in FWO cashback case media release \(www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170208-rubee-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170208-rubee-penalty) .

The Fair Work Ombudsman also is currently pursuing legal action in a matter in which an overseas worker employed as a cook on the Gold Coast was allegedly required to pay-back more than \$21,000 of her wages to her employer in a cashback scheme. Read [Cafe faces Court for allegedly requiring cook to pay back wages in exploitative cash-back scheme media release \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160722-ausinko-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/july-2016/20160722-ausinko-litigation)

“It is hard to see a legitimate reason why an employer would require employees to be regularly paying back significant parts of their wage, and I am concerned that cashback schemes are being utilised by unscrupulous operators in an attempt to get around record keeping laws and disguise serious underpayment of wages,” Ms James said.

“We welcome the Government’s commitment to strengthen laws to explicitly cover cash back arrangements.”

Ms James says workers who find themselves in this situation should document what is going on by making their own records and contact the Fair Work Ombudsman for free advice and assistance.

“I want to make it clear that the lawful obligations to pay minimum wage rates, keep appropriate employment records and issue pay slips apply to all employers in Australia and they are not negotiable.”

In the 2015-16 financial year, 38 of the Fair Work Ombudsman’s 50 litigations (76 per cent) involved a visa holder, and more than \$3 million was recovered for all visa-holders.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50 and information and helpful materials on the website is translated into 27 different languages.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>) , the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>) .

Sign up to receive the Fair Work Ombudsman’s media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases) .

Media inquiries:

Ryan Pedler, Assistant Director - Media

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (<mailto:ryan.pedler@fwo.gov.au>)

Page reference No: 7152

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.