

\$200,000 penalties and compensation after exploitation of Indian workers in Melbourne

5 April 2016

A Melbourne businessman and his companies have been ordered to pay more than \$200,000 in penalties and compensation after trying to use the “corporate veil” to avoid accountability for exploiting two Indian workers.

Pradeep Gaur has been personally penalised \$35,000 for a series of breaches workplace laws, including sham contracting, underpayments and record-keeping.

In addition, Gaur's two North Melbourne-based IT companies - Konsulteq Pty Ltd and Konsulteq Upskilling & Training Services Pty Ltd – have been penalised \$160,000.

The companies have also been ordered to pay more than \$16,000 in outstanding wages to one of the employees, plus compensation of \$5144 for sacking her after she complained.

The penalties, imposed in the Federal Circuit Court, are the result of an investigation and litigation by the Fair Work Ombudsman.

Judge Grant Riethmuller found that the two Indian workers, one on a spousal visa, had a limited understanding of Australian employment laws and their entitlements and Gaur had deliberately underpaid them.

Each of the workers paid Gaur up-front “training fees” of more than \$2000 that they understood would lead to jobs with Gaur's companies - but the workers were not provided with accredited training and were not provided with properly paid employment.

Gaur misclassified one employee as a contractor and then paid her less than half of her lawful minimum entitlements over a 15-month period in 2010-2011, leading to a total underpayment of \$16,571.

Gaur then breached the adverse action provisions of workplace laws by terminating her employment after she continued to complain about her pay.

The other worker, who was also misclassified, was paid nothing for several days of work she performed when Gaur deemed she was volunteering “to get local work experience”.

Gaur back-paid her for the work only after the Fair Work Ombudsman launched legal action.

Other record-keeping and pay slip laws were also breached.

The Fair Work Ombudsman investigated after the employees lodged requests for assistance.

Judge Riethmuller said the two Konsulteq companies were nothing more than Gaur's “alter egos” and he had attempted to use them “as a shield for his own conduct”.

Judge Riethmuller said there was a need to deter Gaur and other employers from “attempting to use the corporate veil to avoid responsibility for work place obligations where they have been the operating mind of the companies when conducting the breach”.

He described Gaur as a “most unimpressive witness”, saying he was not able to rely on anything Gaur stated.

Judge Riethmuller said Gaur had stated he was ready to rectify underpayments but never did and Gaur's companies' books were not consistent with his evidence that he could not afford to pay debts.

“Worse still, he attempted to de-register the companies during the proceedings (stating there were no proceedings pending); hoping this would resolve his problems,” Judge Riethmuller said.

“The attempt to deregister the companies exhibits a desire to avoid having to take corrective action. The conduct of the respondents show there is no remorse or contrition in this case.”

Judge Riethmuller found that Gaur was “aware of his obligations”, noting that the Fair Work Ombudsman had put him on notice in 2011 after conducting an audit and requiring him to back-pay eight employees he had underpaid more than \$8000.

Fair Work Ombudsman Natalie James says deliberate exploitation of vulnerable overseas workers is extremely serious conduct that will not be tolerated.

“The penalties should serve as a warning to the minority of Australian employers who seek to exploit overseas workers that serious consequences apply if they are caught,” Ms James said.

“Minimum wage rates apply to all employees in Australia – including visa-holders – and they are not negotiable.”

Ms James encouraged employers with any uncertainty about their workplace obligations to visit the Fair Work Ombudsman website at www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for advice.

An interpreter service is available by calling 13 14 50, and information on the website is translated into 27 languages.

The Fair Work Ombudsman currently has a national Inquiry into the wages and conditions of 417 working holiday visa-holders in Australia.

The Agency is now receiving more requests for assistance from visa-holders than ever before, with requests from visa-holders accounting for almost 12 per cent of all requests lodged last financial year.

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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

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