

Working From Home Not Enough To Support Independent Contractor Relationship



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Friday, November 24, 2017

The scrutiny by the Australian Courts of independent contractor relationships continues with the recent case of *Putland -v- Royans Wagga Pty Limited*. The Federal Court found in August this year that a husband and wife who provided home-based clerical work exclusively to one company were its employees rather than independent contractors.

Royans Wagga's business involved the repair of trucks. It engaged the services of Mr and Mrs Putland to obtain, collate and pass on information regarding accidents causing damage to trucks. The Putlands each had their own ABNs (Australian Business Numbers), issued tax invoices, to Royans Wagga, split their income and did not use Royans Wagga uniforms or branding. In addition, the work they did was largely done from their home.

Despite these multiple factors favouring an independent contractor relationship, the Federal Court still found the Putlands to be employees. It considered in particular the extent of the control which Royans Wagga exercised over the Putlands. That plus the exclusive service they provided to it left the Court with no doubt as to the true nature of the relationship. It considered that the Putlands were "*subordinate to the Managing Director's wishes, even if he did not always get his way*". This included Royans Wagga giving its approval for Mr Putland to begin providing his services also

(previously only Mrs P was engaged for this purpose) as well as determining increases in their fees. Royans Wagga also often issued written directions to the Putlands concerning the standards of work it expected. If the Putlands had been genuine independent contractors, they would not have needed Royans Wagga's approval of how they staffed the work they did for it. Similarly, it would have been the Putlands who dictated their fee levels and they would have had substantial autonomy over how they provided their services.

In relation to the work being conducted primarily at their home, it was noted that advances in modern technology mean that working from home is not inherently inconsistent with an employment relationship. These days, the work of an administrative or clerical nature that can be done at home differs little from what could once only have been done in the workplace.

Lessons for Employers

- This case serves as a reminder to businesses which use independent contractors that even if the contractor has their own ABN, issues their own tax invoices and works remotely, this will not be determinative of a contractor relationship. The Courts will assess a wide range of factors including whether the principal has (by contract or practice) the right to control the contractor, whether the contractor is providing their services only to the principal and what is said on the point in any written contract (but see 3 below). They may also look at how far the contractor advertises their services to the public in general, what level of specialist technical expertise the contractor brings, and whether the role is of a temporary advisory or permanent operational (i.e. employee-type) nature.
- Other relevant factors could include the presence or absence of the normal indicators of an independent business operation, such as the contractor having their own insurance, logo/branding, website or marketing material, any contract of employment he/she has with a limited company or partnership; the ability to offer a wider range of services than provided to that "customer"; whether the individual's commitment is full-time (so making it *de facto* impossible for him to work with anyone else anyway); and who supplied the basic form of any written contract entered into. As a rule the employer would provide the employment contract, whereas the contractor would provide the starting point for a business services agreement, even if both were then subject to some level of negotiation.
- Although the written terms of any contract with a "contractor" are relevant, they are not determinative – if in practice the individual is managed like an employee and does the work of an employee over the hours of an employee, he could well be found to be an employee, quite regardless of what the contract says.

Leah O'Connell authored this post.

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