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AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR

Language and Nature - The real relationship behind the contract for services:

It is shocking to read from a recent study in 2016 that over 211,000 Employees do not have an Employment Agreement and under the Employment Relations Act this is a breach of the Act.

Having an Employment Agreement is of course important but the wording of this Agreement is just as important as the actions and nature of that relationship.

There is an important distinction between the Employee which has a contract of service and Independent Contractors who are engaged under a Contract for Services. Putting "Independent Contractor" all over the document does not necessarily make them an Independent Contractor.

Take Earl for instance, Earl had a twenty four year history of model making as a hobby. He had worked for an internationally renowned special effects company called the Wow Special Effects ("WPE") on several occasions in its miniatures unit. WPE would send Earl to Ogre Making ("OM") (an associate company) as a temporary model maker.

After two weeks of secondment he was offered a permanent position with OM as an onset technician working on a blockbuster movie.

They negotiated terms and Earl left WPE to work for OM as a model technician. He worked set hours from 6.30am till 5.30pm with 45 minutes for lunch.

Earl was given a Contract that stated he is an Independent Contractor. For the first three weeks he received training and

after 5 months he asked for a raise and was given one.

A month later OM gave all its crew a written contract that referred to Earl throughout as an Independent Contractor. Earl continued to work for OM for a further year at which he received another pay increase.

A month later Earl was advised that OM had to down size its miniature unit and could only keep two technicians and that Earl was not one of them. Earl took OM to Court claiming that he was an Employee rather than an Independent Contractor and the Court found in his favour. The Court found that it is the real nature of the relationship that is important in determining whether Earl was an Employee rather than an Independent Contractor and that calling Earl an Independent Contractor did not mean he was one.

If the person is performing their services on their own account then they are an Independent Contractor.

In Earl's case he had set work hours and lunch breaks and had to ask the Manager for permission to leave work early.

Simply relying on the language of the contact is not enough. It will not help you if the nature of the relationship is not correctly reflected in the Contract.

20 MINUTE FREE

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