**Advice to Catherine by a work Place Lawyer**

**Issue**

This assignment deals with the Labor and Employment laws. The main Issue in this case is to decide whether Catheirne is an employee of the Best Fashion Pty. Ltd. or she is an independent contractor for Best Fashion Pty. Ltd. as the agreement signed between Best Fashion Pty Ltd And Fashion Services.

**Rules**

This case deals with several legislation incorporated in the country i.e. The Work Place Relation Amendment (Independent contractors)Act 2006 (Government, 2006), Fair Work Act (1994) (Australia, 1994), Fair Work Act (2009) (legislation, 2009)

The relevant Sections of Fair Work Act (1994) (Australia, 1994) in this case are **Section 4** (Australia, 1994) which reads as Interpretation (Australia, 1994) and ***Section 5*** (Australia, 1994) which reads as outworkers.

The relevant Sections of Fair Work Act (2009) (legislation, 2009) in this case are ***Section 30F*** (legislation, 2009) which reads as Extended meaning of outwork entity, ***Section 47*** (legislation, 2009) which reads as When a Modern award applies to an employer, employee, organisation or outworker entity, and ***Section 48*** (legislation, 2009) which reads as When a Modern award Covers an employer, employee, organisation or outworker entity

The relevant Sections of The Work Place Relation Amendment (Independent contractors) Act 2006 (Government, 2006) in this case is ***Section 902*** (Government, 2006) which reads as Prohibited conduct for purpose of engaging Certain Person as independent contractor

**Analysis**

The common law definitions have been ambiguous as their application has required a multi-factor test to determine if a worker is an employee or a contractor. The NSW Government submission instead provides a more detailed overview of the basis to distinguish the existence of a contractual relationship relying on a test constituting a number of established factors or indicia which evolved through various High Court rulings in cases such as Stevens v Brodribb Sawmilling Co Pty Ltd (1986) (Stevens V. Brodribb Sawmilling co Pty Ltd, 2002).

The NSW Government submission citing Professor Andrew Stewart (Stewart, n.d.) states that there is no unanimously accepted understanding of how many indicia, or what combination, must point towards a contract of service before the worker can be characterised as an employee.

Differentiation between employers and independent contractors may be conclusively done on the merits derived from the below detailed Indicia for multi-factor test in light of terms of the contract under our perusal (Government, n.d.).

**Indicia :\_ Explanation /Facts of case**

Whether the worker is providing skilled labour - Fashion Services entered into a contract with Best Fashion Pty Ltd to supply the fashion designing services of Catherine to Best Fashions Pty Ltd. This supports an independent contracting arrangement. In this landmark case (Hollis v Vabu Pty Ltd (t/as Crisis Couriers) , 2001) it was held that the court does not only pay attention to the label of relationship between purported employer/employee but adopts a holistic approach and looks at all the aspects of relationship to determine its nature.

How the hirer pays the worker – Fashion Services are paid on hourly basis at the rate of $65 for each hour for worked by Catherine irrespective of the results achieved; this supports Catherine being an employee. However, Fashion Services provides monthly tax invoice to Best Fashion Pty Ltd for total number of hours worked by Catherine during the particular month at the agreed rate of $65 per hour. This is one of the features of relation with Independent Contractor.It was held in this case ( MWWD v Commissioner of Taxation, 2020) that the purpose of engagement is to be considered as to whether the engagement is for “to be served” or “to provide services.”

The degree of control the worker has over the work – Despite the terms of contract that require Fashion Services (Catherine) to design clothes on their own (contract remaining silent on design specification, presuming to be discretion of Fashion Services) the requirement that these designs become the property of Best Fashion Pty Ltd., qualifies Catherine for an independent contractor.

Whether the worker provides similar services to the general public - The contract being silent on this aspect, we presume Catherine is independent to solicit her services to the general public like any independent contractor.

Whether there is any scope for the worker to bargain for the rate of remuneration - Since the rate of remuneration has been frozen through the contract terms, and there is no scope for bargain, this supports a finding that Catherine is not an employee, but an independent contractor.

The provision of leave – As per the terms of contract, Catherine is entitled to leaves that have been prior approved by the Design Manager. This fact qualifies Catherine for an employee. In the case (Blake v Sitefate Pty Ltd and Impulse Transportation Group., 1997), it was held that despite an agreement which specifies to the contrary, for operational purposes, the pilots would be construed to be employees. Regardless of the nomenclature of agreement, in case the employer sets up certain corporate structure and imposes them upon the other party, it would result in employer employee relationship.

Whether the worker has the right to delegate the work to others – The contract expilicitly requires that Fashion Services may only provide the services of Catherine and not supply any other person to Best Fashion Pty Ltd thereby making it very clear that Catherine does not have the right to delegate the work to others. This again supports Catherine being an employee of Best Fashion Pty. Ltd.

Whether the worker has an obligation to work - The contract requires Catherine to work 40 regular hours per week. Besides, she is required to report to the the Design Manager of Best Fashion Pty. Ltd. Considering these terms of the contract, we state that the hirer has the right to dictate hours of work and the worker cannot refuse tasks, this again supports Catherine being an employee.In this case (CFMEU v Personnel Contracting Pty Ltd , 2020)it has been held that rather than standard prepared contract, the stated intention of the parties must be given weightage which is usually on “take it or leave it basis”.

The place of work - As per the contract, Catherine is provided with an office and a computer by Best Fashion Pty Ltd. This qualifies Catherine as an employee of Best Fashion Pty. Ltd.

The degree to which the worker is integrated into, and is treated as part of the hirer’s enterprise – The contract term requiring Catherine to attend meetings and fashion shows as the representative of Best Fashion Pty Ltd qualifies her for an employee of the Best Fashion Pty Ltd. In this case ( Roy Morgan Research Centre Pty Ltd v Commissioner of State Revenue (Vic), 1996) it was held that when there is high degree of structured nature and elaborate set of directions about the manner in which the work is to be done, in such cases the party doing the work would be deemed to be employee of the directing party.

Whether the worker is making a significant capital contribution – Catherine not having made any significant capital contribution other than providing own design software which is an ordinary tool of her trade, Catherine qualifies only for an employee and not an independent contractor.

**Conclusion**

In light the above analysis of multifactor testing performed to determine the relationship between Catherine and Best Fashion Pty Ltd., it is observed that six factors Shows that Catherine is an Employee of Best Fashion Pty Ltd. and five factors against qualifying Catherine as an Independent Contractor. Hence the laying off of Catherine is contravention of applicable laws and regulations of the country.

# Bibliography

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