TAX TALKS

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Employee or contractor – Old problem. New Court Case. Two new court cases in fact that are changing everything.

Employee or Contractor

To decide whether somebody is an employee or contractor, you used to look at the totality of the relationship based on the actual facts. You used to look at the actual work, how the employee is actually working. But this has changed as Sam Harvery of Laxon Lex Lawyers in Sydney will outline in this episode.

Here is what we learned but please listen in as Sam explains all this much better than we ever could.

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Employee or Contractor

Two High Court cases have changed everything – the Personnel Contracting case and the Jamsak case. But let's go through these two cases in the next episode. In this episode let's look at what actually changed through these two court decisions.

Here is just a very short summary. Please listen to the episode where Sam Harverey outlines the details.

How It Used To Be

You used to look at the actual totality of the relationship. Not what the contract said. But what the relationshipa actually looked like. Who did, said and controlled what.

The problem is that this is very hard to prove. You easily get into a "He said, She said" situation. And it completely ignores the contract. What's the point in a contract if it all comes down to what the facts might or not might not have been?

What Has Changed

So the High Court went back to the contracts in the Jamsek and Personnel Contracting cases. They looked at how the contract formed the relationship. Who had what control as per the contract. Who could decide what per contract. And based on that they ruled whether the relationship is one for service (contractor) or of service (employee).

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Going Forward

So if you want to treat somebody as a contractor and there is the slightest possibility that they could claim to be an employee, do the following:

Have a Contract

Without a contract you go back to facts and 'he said, she said'. You as the business are more vulnerable without a contract to claims that somebody is an employee.

Leave Location and Time Flexible

If possible, don't determine when and where the work is done. Leave as much flexibility as possible.

As an accountant for example, don't say your staff has to work 9 to 5 from home. But say that it is up to the worker when and where they work. All you want is these 100 BAS correctly lodged, or these 50 tax returns filed.

Pay For Result, Not Time

Don't pay per hour but per result. Pay x AUD per BAS or return. Or pay y AUD per client taken care of. Paying for time moves you back into an employment relationship.

Renew the Contract

Renew the contract on a regular basis so that there is no room for claims that the contract is outdated.

Avoid Sham

Don't say x in the contract and demand y outside of the contract. Don't write something in the contract that is not true. For example, don't say you can work wherever you want, but then send out an email saying all need to be back in the office. If you do that, you create the risk that the entire contract is voided as a sham contract.

Parting Words

So these were just some thoughts. Please listen to the episode with Sam Harverey since Sam outlines all this a lot better than we can.

MORE

Resident Director

Business Break Ups

Unfair Contract Case Study

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