

Article Information

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Employment Relations Podcast #13 - Does it pass the smell test? When a contractor is actually an employee.

In Episode 13 of our Employment Law for the Time Poor podcast, Professor Andrew Stewart and Emily Haar consider four recent cases on the vexed issue of whether a worker is an independent contractor or an employee.

As the cases reveal, there are two competing views as to how the multi-factor test is to be applied: does the Court need to look at the substance and reality of the relationship, or do the contractual arrangements reveal the parties' true intentions about the relationship? To what degree does the "contractor" have to be running a business of their own to legally be an independent contractor?

Professor Andrew Stewart and Emily Haar consider the viability of the "Odco" system of treating labour hire workers as contractors and whether the High Court will be tasked to determine which of the two competing views is the correct method of applying the multi-factor test.

This is an area that is rife with risk for organisations, and knowing the current state of the law is a must-do.

We discuss the following four cases in this podcast episode:

- *Dental Corp Pty Ltd v Moffet* [2020] FCAFC 118 (16 June)
- *Jamsek v ZG Operations Australia Pty Ltd* [2020] FCAFC 119 (16 July)
- *Eastern Van Services Pty Ltd v Victorian WorkCover Authority* [2020] VSCA 154 (12 June)
- *CFMMEU v Personnel Contracting Pty Ltd* [2020] FCAFC 122 (17 July)

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