

LHMU Submission to the Inquiry into Independent Contracting and Labour Hire Arrangements

The Liquor Hospitality and Miscellaneous Union (LHMU) is arguably the most diverse trade union in Australia, with membership and industrial coverage across a range of sectors and industries, including in hospitality and tourism, community services and health, contracting services such as cleaning, catering and security, and in manufacturing.

In many sectors covered by the LHMU, the labour market can be typified as volatile. In contracting industries, such as cleaning, security and catering, contracts between companies and clients can change hands frequently - from anywhere between one month to a few years. A stable industrial relations system is essential to ensure these workers have stability and security of employment. Labour hire is not a prevalent issue in LHMU industries. Independent contracting is an issue in particularly the cleaning and security industries, where it occurs mainly at the initiative of the employer.

The LHMU, particularly in the cleaning industry, has had experience with employers who seek to make workers who are genuine employees, with regular shifts and little choice in the way they work, into independent contractors. Whilst for some workers becoming an independent contractor with real choice and flexibility in the work they do can be of real benefit to the worker, in industries such as cleaning workers may find themselves being forced to become independent contractors and losing the protection that the award system can offer them, such as redundancy and unfair termination rights. For our members job security is a major concern and they would prefer to remain as direct employees with the protection of the award system.

Below is the story of LHMU cleaner member, Chris . His story is indicative of the issues that LHMU members may be faced with, if careful attention is not given to whether a worker is genuinely an independent contractor or not.

Chris* started working for Endoxos Cleaning Company in August 1998 in Canberra.

Chris had many positions with Endoxos as a cleaner, often cleaning a number of sites on a regular basis whilst also being on call for emergency work.

Chris worked a day shift during the day, and also worked a permanent part time night shift at night, after he finished his day work.

Chris worked for 58 hours a week for Endoxos at various sites.

He was given an Endoxos van, which he would take home at night. The van contained all of the equipment he needed for his work. Endoxos maintained the van, and paid for petrol. They also gave him a mobile phone, which they paid for, so he could be on call for emergency work.

In July 2001 Chris was told by Endoxos that Endoxos was implementing a new system and that all employees were to become subcontractors. He was told nothing would change with his employment.

Chris wasn't happy about becoming an independent contractor. He wanted to stay directly employed, to retain his public holidays, sick leave and annual leave. He was concerned about his job security. At the time, his wife was seriously ill and could not work. Chris needed job security to keep supporting his wife.

He was told by Endoxos that he had to become an independent contractor, or else he would not be given any more work by Endoxos. He had little choice in the matter, and signed the papers he was given by Endoxos. He was paid out his leave entitlements but did not receive any redundancy payment.

Chris continued to work in the same manner he always had. He continued to fill out time sheets. He still had an Endoxos van and mobile phone. He never talked directly with the clients whose premises he cleaned, and had no ability to alter his work patterns. He continued to be supervised by Endoxos supervisors.

He was paid rates of pay from which accident and public liability insurance was deducted as well as long service leave and superannuation. He did not negotiate with rate of pay, it was determined by Endoxos. He was not able to approach the client directly and negotiate his payment.

In January 2002, Chris was told he was no longer required to do his night time job. He was told it was due to his performance at the job. He later asked the client whether he was unhappy with Chris' work- he replied he was not unhappy with the work. Endoxos had never raised the issue before. Chris took his case to the Australian Industrial Relations Commission, who told him they lacked jurisdiction as he was an independent contractor and not an employee.

He was later also taken off his day shift.

The LHMU took Chris' case to the Federal Court, arguing that he was not a genuine independent contractor, and was in fact an employee of Endoxos and should therefore be able to access the jurisdiction of the Australian Industrial Relations Commission for harsh, unjust and unreasonable termination of employment. The Federal Court found in favour of the LHMU as to his employment status.

The LHMU is assisting Chris to argue his unfair termination case in front of the Australian Industrial Relations Commission.

*(This précis of facts is based on the witness statement the LHMU filed on behalf of Chris in his unfair termination case)

Conclusion

The LHMU is concerned that vulnerable workers, such as Chris, may have little choice in becoming independent contractors and suffer serious disadvantage when they do.