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# Employment Law - Landmark Sham Contracting Case

Date : August 1, 2017

## Employment Law – Background

In March 2015, the Fair Work Ombudsman (**FWO**) brought a case against Quest South Perth Holdings Pty Ltd (**Quest**) for breaches of the *Fair Work Act 2009* (Cth) (**the Act**). In a long-running legal saga, the Federal Court found that Quest and Contracting Solutions Pty Ltd had not contravened the Act by moving employees onto independent contractor arrangements. By the end of 2015, the High Court of Australia overturned the Federal Court ruling and therefore found Quest had engaged employees in a ‘triangular’ sham contracting arrangement.

In June 2017, the Federal Court fined Quest a total of almost \$60,000 in penalties for contraventions of the Act. This outcome underlines the importance of employment protections in employment law.

## Employment Law – Facts

In essence:

- Quest and Contracting Solutions Pty Ltd (‘Contracting Solutions’) moved two housekeepers and a receptionist onto independent contractor arrangements
- the receptionist faced ‘significant’ financial issues because she no longer received any shifts
- the two housekeepers received a flat rate. Consequently, they did not receive entitlements such as overtime and penalty rates
- Quest threatened to dismiss a receptionist because she refused to enter into an independent contracting arrangement. Her reluctance was justifiable as she was performing the same work under her existing contract

## Employment Law – Decision

Justice Gilmour:

- found Quest had misrepresented the true nature of the employment relationship
- held Quest had breached s357(1) of the Act
- treated the s357 contraventions as two distinct courses of actions
- accepted the FWO’s assertions that each employee was a “different victim” of Quest’s conduct. Furthermore, such conduct “should be treated separately for the purposes of determining penalties”
- fined Quest a total of \$33,000 for two breaches of s 357(1) of the *Fair Work Act 2009* (Cth)
- fined Quest \$21,450 for breaching s358 of the Act due to the threatened dismissal of the employee in engaging them as independent contractors

- in addition, the general manager of Quest was fined \$4,290 because he engaged the labour hire agency Contracting Solutions to implement the sham arrangement

The decision is available for you to read through the following hyperlink:

[Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd \(No 4\) \[2017\] FCA 580 \(7 June 2017\)](#)

## **Employment Law – Tips for Employers**

Our **Matthews Folbigg Workplace Solutions** employment law team recommends employers:

- review this Federal Court decision
- seek the assistance of an employment lawyer to understand the impacts of this decision
- ensure employment contracts and employment law policies comply with relevant employment laws, Fair Work Commission decisions, common law employment law principles and contractual obligations
- ensure compliance with all employment laws including Fair Work Commission decisions, Awards and enterprise agreements
- penalties can apply for breaches of employment laws including Awards and enterprise agreements (which an employment lawyer can advise on)

## **Employment Law – More Information**

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** employment law team on **9635-7966** to speak with one of our employment lawyers.