



Legally Speaking



Cutting costs:

Employment challenges

In the current tough economic times, many businesses in North Canterbury are faced with the challenge of reducing costs.

with Grant Edmondson
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Aside from traditional cost saving exercises, employers are now looking to ensure that their respective workforces are fit for purpose and their workforce is properly geared towards maximum productivity whilst also trying to ensure that unnecessary costs are avoided.

The first reaction to these challenges is often a knee-jerk reaction to reduce staff headcount. The termination of a worker's engagement with a company can be fraught with difficulties, depending on whether the worker is an Employee or a Contractor.

Where the worker is an independent Contractor, the business is able to terminate the services of the Contractor in accordance with the negotiated contract terms.

This is not the case in dealing with an Employee. The company will need to give evidence to the fact that termination is on appropriate grounds and that the required procedures in respect of termination have been followed.

Knowing whether a worker is a Contractor or an Employee is critical to this process and

in fact, moving forwards, companies should carefully consider whether the resource concerned is to be an Employee or a Contractor as there are various benefits to securing the services of a Contractor.

The Contractor essentially operates his or her own business and provides the services for their own account.

The Contractor is responsible for their own income tax and ACC levies and is paid solely for the days worked and for which the business owner is invoiced.

The business owner is not required to pay for leave arising from holiday, illness or bereavement.

In addition, the Contractor, subject to the role for which they are required, will be obliged to provide their own tools and equipment and often this will include PPE.

The business owner and the Contractor will be free to determine by collective agreement the hours, method of work and location of where the services will be rendered. The Contractor may also provide these services for other third parties.

The terms of employment however will be fundamentally different in that the business owner will be required to pay the salary or



wages from which PAYE and ACC levies are deducted by the Employer. The Employee is entitled to statutory leave requirements including annual holidays, public holidays, sick leave, etc in accordance with the Holidays Act 2003.

The benefit for the Employer is that the Employer will have a greater degree of control over the worker's performance which may be a benefit given the nature of the role performed by the Employee.

It is important for the Employer however not to create an artificial construct whereby the worker is essentially an Employee but is "dressed up" as a Contractor with the Employer hoping to terminate the services of the worker without having to follow the necessary statutory protocols.

It is essential for business owner to ensure that the configuration of workers (whether Employees or Contractors) is aligned with the business requirements.