

A VISION IN THE WORKPLACE

Our September edition of Vision includes:

- When Does a Demotion Amount to Dismissal?; and;
- DoorDash Food Delivery Drivers are Independent Contractors .



When Does a Demotion Amount to Dismissal?

A recent case examined by the Fair Work Commission (FWC) highlights circumstances where a demotion of roles may amount to a dismissal under the *Fair Work Act 2009* (Cth) (“the Act”). The case involved a practice manager’s demotion at a Sydney based legal centre, which resulted in a substantial pay reduction of over \$16,000.

The practice manager, Ms Maloney, contested the demotion as a dismissal through a general protections application under s365 of the Act.

Case Background

Knowmore Legal Service Limited asserted that the practice manager had been demoted after a workplace investigation into her confirmed misconduct allegations. Knowmore argued that Ms Maloney did not initially contest the legal basis for demotion and therefore consented to it.

Furthermore, Knowmore contended that Ms. Maloney remained employed as she had been on leave without pay since April 5, and the demotion was consistent with her contract, allowing for direction to perform other duties to suit organizational requirements.

Reasoning for Decision

Deputy President Judith Wright evaluated whether the demotion amounted to a dismissal by considering the following factors:

- whether the practice manager voluntarily consented to the demotion;

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- whether the demotion was authorised by the employment contract or an instrument governing it;
- whether Knowmore repudiated the employment contract by demoting the practice manager; and, if so, whether the practice manager accepted the repudiation.

Deputy President Wright concluded that the practice manager did not explicitly or implicitly consent to the demotion either verbally or in her 6-page letter in response to her notice of demotion.

Furthermore, the relevant industrial instruments did not authorise such a pay reduction given that there was no reference made to reducing pay in the enterprise agreement or in the Managing Misconduct Policy. Consequently, the employer's actions constituted repudiation of the employment contract.

The Deputy President found that the practice manager "made it clear to Knowmore that she objected to the demotion and did not affirm her employment contract".

Key Takeaway

Employers must ensure that any significant changes in an employee's role or remuneration are clearly authorised by the employment contract or relevant industrial instruments. Mere consent to perform different duties does not imply consent to a demotion or pay reduction. Repudiation of an employment contract can occur if a demotion or other adverse action is not explicitly authorised and communicated properly, leading to potential legal challenges and liability for employers.

As always, employers are encouraged to seek professional legal advice regarding employee misconduct and demotions. If this article raises any questions for you, please do not hesitate to contact Nick Stevens, Peter Hindeleh or Josh Hoggett.

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DoorDash Food Delivery Drivers are Independent Contractors

In a significant ruling, the Fair Work Commission (FWC) has held that a DoorDash food delivery driver is classified as an independent contractor rather than an employee. Commissioner Phillip Ryan considered various factors, such as control, delegation, and equipment, and found that these elements weighed largely in favour of an independent contractor relationship. The decision comes in light of the Albanese Government's commitment to introducing protections for "employee-like" workers and empowering the FWC to set minimum standards and pay rates.

Case Background

Commissioner Ryan highlighted the absence of control that DoorDash exerted over its delivery drivers. Unlike traditional employees, the drivers had the freedom to choose when, where, and how they worked; they could accept or decline delivery opportunities and were not bound by any obligations to complete a particular volume of work.

The DoorDash agreement from 2022 also formed a crucial part of the ruling. It outlined the drivers' rights to employ other workers or sub-contractors and provide delivery services to other businesses while remaining available to DoorDash. Furthermore, the absence of uniform requirements, along with drivers' responsibility for vehicle costs and other equipment, further supported the independent contractor status.

DoorDash drivers are remunerated per delivery rather than hourly wages. Although this payment structure is typically consistent with independent contractor arrangements, Commissioner Ryan noted that it does not necessarily preclude an employment relationship. However, the lack of traditional employment benefits, such as annual leave, personal leave, long service leave, superannuation, and other entitlements, strengthened the case for independent contractor status.

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Implications of the Decision

This landmark ruling has significant implications for the gig economy and the classification of workers within it. While DoorDash drivers have been deemed independent contractors, it is important to note that each case will be assessed on its individual merits and contractual arrangements. The ruling aligns with the company's recent agreement on "core principles" for gig economy work, which aims to extend appropriate rights and entitlements to drivers and establish channels for dispute resolution.

Key Takeaway

The FWC's decision to classify DoorDash food delivery drivers as independent contractors reinforces the importance of contractual terms and their alignment with the actual working relationship. The ruling also emphasizes the need to balance the evolving nature of the gig economy with appropriate protections for workers. As the landscape of work continues to transform, it remains crucial for businesses and policymakers to strike a balance between flexibility and safeguarding the rights of gig workers. If this article raises any questions for you, please do not hesitate to contact Nick Stevens, Peter Hindeleh or Josh Hoggett.

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