

### **UK Supreme Court Clarifies Law on Sham Employment Contracts**

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In the UK, the question of whether an individual is an employee, a worker, or self-employed is an important one because the rights that the law provides to the individual vary depending on his or her status. For example, the right not to be unfairly dismissed and the right to receive a redundancy payment are only available to employees. Establishing the employment status of an individual is not always straightforward, and it is a question that commonly arises in the Employment Tribunal.

In the case of *Autoclenz Ltd v Belcher and others*, the UK Supreme Court upheld the decision of the Court of Appeal, which decided that despite an express term in the contracts stating that a number of car valets were self-employed, they were in reality employees of Autoclenz Ltd (the valet company to whom the purported self-employed contractors had provided services).

The Supreme Court's decision provides clarity in situations where an Employment Tribunal must decide the employment status of the claimant before it. As shown in *Autoclenz*, the Employment Tribunal may disregard express terms of a contract if these do not reflect the true nature of the relationship between the parties. An Employment Tribunal will be able to go behind the clear express terms of an agreed contract and look to the realities of the situation and the actual legal obligations of the parties. The contract is simply one of several factors to be considered in deciding the true nature of the relationship between the parties.

In *Autoclenz*, the contracts expressly stated that the car valets were "sub-contractors", that they could provide substitutes to undertake their work, and that there was no mutuality of obligation between each car valet and Autoclenz. Such clauses are consistent with a contract for the provision of services. However, these clauses were not truly in the contemplation of the parties when they entered into the contracts and did not reflect the true agreement between the parties because in reality the car valets were unable to provide a substitute and there was mutuality of obligation between the parties. Accordingly, despite the express terms to the contrary, the car valets were found to be employees of Autoclenz.

#### **Impact on Employers**

Although the decision in *Autoclenz* has clarified rather than changed the law, it should serve as a warning to those organisations which seek to avoid their employer responsibilities by hiding behind a sham contract which expressly states that the affected individuals are self-employed contractors. An Employment Tribunal will not apply the same principles to an employment contract as those that apply to commercial contracts. It will look at all the circumstances of the relationship between the parties, not

just what the parties have expressly stated the relationship to be. Such an approach is necessary to take into account the inequality of bargaining power, which is often to the would-be employees' detriment in such situations as they must accept the terms that the organisation offering work or requiring services dictates.

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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