

Understanding the employment relationship in the sex industry.

Generally, there are two types of employment relationships recognised by the law. There is the employee / employer relationship and the employer/staff employee relationship, which is also referred to as the relationship between an employer and an independent contractor.

In most employment relationships the nature of the employment is set out in writing between the two parties. Generally there will be some form of written contract or letter of appointment which details the conditions of the offer of employment and obligations of the person who accepts the offer. This contract may refer to an industrial award or agreement. This is not generally the case in the sex industry. (Although in Victoria, there is an industrial award).

So what do sex workers do when there is no written agreement which clearly sets out whether they are an employee or an independent contractor? The law distinguishes between the two types of relationships based on a number of factors and in each case the particular circumstances of the arrangements will be what is taken into account. Generally the law says that it is the degree of control exercised by the employer which determines whether or not the person providing a service is doing that as an employee or as an independent contractor.

The factors that are taken into account to sort out the relationship include:

1. How is the person paid
2. How are hours worked out, eg rosters etc
3. Where the work is carried out
4. Who provides the equipment:clothing; and any other resources used to do the work.
5. Whether holidays or other forms of leave apply.
6. Whether tax is deducted and who deducts it.
7. How work is allocated and supervised.
8. Superannuation
9. Insurance cover

In the sex industry in this state. [WA] The question of the so called 'legality' or otherwise of the industry also pops up in case's looking at this question. The case of Phillipa vs Carmel (both from Kalgoorlie) in 1995 examined this question in great detail and in those particular circumstances found that Phillipa was an employee, regardless of the 'legality' of the industry.

If a sex worker is dismissed and wanted to take a claim to the industrial commission for unfair dismissal; the first issue to be sorted out would be what is the employment relationship. To work that out; documentation of all the sorts of factors listed above is the best evidence. So the message is keep copies of everything.

Even if there are no written arrangements about any of the above factors, if a sex worker kept a notebook or diary of work arrangements and verbal arrangements over the period of employment, that could be valuable in any case.

This information is really just an overview of what can be very complicated legal relationships in each case the particular arrangements would need to be taken into account to work out whether a case was likely to succeed in the industrial commission.