

## High Court lays down rules on independent contractors

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The High Court has affirmed the primacy of contractual terms in determining employment relationships, finding a construction worker was an employee of a labour hire company and that two truck drivers were independent contractors despite decades of exclusive service to a solitary business.

In *CFMMEU v Personnel Contracting*, the union had appealed a full Federal Court ruling upholding Justice David O'Callaghan's [finding](#) that a young British traveller engaged by a labour hire company was an independent contractor (see [Related Article](#)).

Finding in favour of the CFMMEU, a High Court majority today held that where parties have clearly set out the terms of their relationship in a lawful written contract, the employment relationship is determined by their mutual rights and obligations according to established principles of contractual interpretation.

Under the labour hire company's contract, it could dictate who the labourer worked for, while he promised to provide his labour to a prescribed builder.

The employer's ability to supply a compliant workforce was the key to its business, the court found, producing an employer-employee relationship despite the use of the "contractor" label.

In *ZG Operations v Jamsek*, the employer had sought to overturn a full Federal Court [ruling](#) that two truck drivers, one of whom is now dead, were employees (see [Related Article](#)).

One member of the full court, Justice Michael Wigney, said that despite the drivers signing contracts in 1986 that described them as contractors, "the reality was that, aside from the fact that the men took over the risk and expense of owning and operating the delivery trucks, little else changed".

"The men certainly had no real independence," he said.

The High Court today disagreed, unanimously holding that after 1985 or 1986, the contracting parties were the drivers' partnerships and the company.

The court found that the context for the first contract between the parties was the company's refusal to continue to employ the drivers and its insistence that they only contract to carry goods.

The High Court remitted the matter to the primary judge.

### More to follow.

[Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd \[2022\] HCA 1 \(9 February 2022\)](#)

[Personnel Contracting summary](#)

[ZG Operations Australia Pty Ltd v Jamsek \[2022\] HCA 2 \(9 February 2022\)](#)