

Exclusive: courts to take away employment rights for contractors

An upcoming court decision is expected to take away most chances that contractors may have of obtaining the same rights as employees through bringing suit to the Employment Appeals Tribunal, ContractorCalculator has learned. The decision could also weigh heavily on the future of proving contractors to be 'within' [IR35](#).

All Cases Suspended!

Last week the Right Honourable Lord Justice Mummery announced that all cases in which contractors or agency workers were seeking employment rights would be suspended in view of the impending decision to be announced in the appeal of James v. Greenwich. This case which dates back to 2006, is already considered a critical piece of case law in determining when there exists a relationship of employment between a contractor and a client, despite the existence of an agency contract.

"Dacas" To Be Reversed

Legal sources have explained that what is expected is the effective reversal of another critical decision in this case law: the March 5, 2004 Court of Appeals decision in the case Brook Street Bureau (UK) Ltd -v- Patricia Dacas.

The 'Dacas' decision included a determination that there can exist an implied employment contract between a contractor and the end-user client, even when the contractor is paid by an agency.

Mrs. Dacas had been supplied by Brook Street Bureau to work for Wandsworth Borough Council over a period of five years. When the contract ended due to her alleged misconduct, Mrs. Dacas made a claim of unfair dismissal. This was not accepted by the Employment Tribunal, on the basis that Mrs. Dacas did not have a contract of employment, or contract of service, with either the agency or the client. However, on appeal, the Employment Appeal Tribunal decided that she had been an employee of the agency.

Brook Street Bureau appealed that decision, and the Court of Appeal overturned it. But the critical bit of case law in the matter comes from the detailed explanation by the Appeals Tribunal of what does constitute an implied contract, as one of the justices explained:

Mutuality of Obligation

Mrs. Dacas was obliged to work for the Wandsworth Borough Council. The Council was obliged to pay her, albeit through the agency. When Mrs. Dacas stopped doing the work, it was because the Council decided that they did not require her services any longer. The Council had objective and effective control of Mrs. Dacas' contract, and that means it was a contract for employment.

It is clear that this view of the existence of an implied contract of employment is about to be reversed: at least to some degree, in the James v. Greenwich case.

The Consequences

What does it all mean? Until this decision, contractors who felt they were actually in an employment relationship with the client had the ability to obtain employee rights and perquisites through an appeal to the Employment Tribunal. This may no longer be possible, and contractors may find themselves treated like employees but with no recourse to obtain employee rights.

What About IR35?

The consequences for proving a contractor within IR35 are not at all clear. This same case law is referred to complete that proof. If "Dacas" is not used to prove that relationship, it will undoubtedly make proving such much harder for the Revenue; and we bear in mind that the Revenue has had little success up to now with these cases.

But without the actual language of the decision, it is very difficult to predict exactly how this ruling will affect IR35 cases. We can look forward to the official word very shortly though, and then we can learn more.

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