

## Navigating the Intersection of Personal and Professional Relationships

**The legalities of the employment relationship are tricky at the best of times. When the employee and employer are family or in a personal relationship, things can get even trickier.**

It is relatively common in New Zealand for someone to have their kids or partner help out with the family business. It is also common for one partner to receive a salary from the business as a way of providing income, which can also have tax advantages, even though there may not be an intention for the person to be employed by the business.

Is there an employment relationship where a family member or spouse is helping out? It depends on the true nature of the relationship. Despite it being a relatively common arrangement, there is surprising little case law on the topic. The Court in *Dillon v Tullycrine Ltd* has held it shouldn't jump to assume an employment relationship exists where there is a personal connection, if that was not intended and doesn't reflect the true basis upon which the exchange between parties occurred.<sup>1</sup>

In that case, Chris Dillon and his wife, their son and their daughter-in-law purchased a block of land to run an agricultural business on. Dillon performed work on the land, including caring for the horses and other farm work, and made a claim for wages, arguing he was an employee. The Court found the arrangement between the parties was always based on their familial relationship. Dillon and his wife were approaching the end of their working lives with little in the way of assets or income and the business was seen as a way in which all the family would contribute and benefit. Dillon had expectations his son and daughter-in-law would support him and his wife when they retired and was hoped the business would be successful to everyone's benefit. Dillon was not an employee.

That decision can be compared to the Employment Relations Authority determination in *McKay v Wanaka Pharmacy Limited*<sup>2</sup>.

Nicole McKay and Aaron Heath were together for 13 years and operated the Wanaka Pharmacy Ltd and Wanaka Sun (2003) Ltd. McKay undertook various roles and responsibilities for the two companies and was paid a salary, until she separated from Heath in 2018. She reported to work one day and was told someone else had taken over her role. That same day she received a letter from Heath's lawyer confirming she no longer worked for the Wanaka Sun or the Wanaka Pharmacy. McKay filed in the Employment Relations Authority<sup>3</sup>, claiming she was an employee. Heath said McKay was not an employee because of their matrimonial relationship, that her salary was introduced for income splitting tax purposes and there was never an intention to create an employment relationship. Heath claimed the work McKay undertook was flexible and of her own volition.

The Authority concluded the work McKay undertook over the years was not of a minimal nature and/or without value to the companies. Whilst she had a degree of freedom in when and how she undertook some of her responsibilities it was not to the extent that there was no control or supervision at all. The integration and fundamental tests favoured a relationship of employment. The real nature and true basis of the relationship between Ms McKay and Wanaka Pharmacy and Wanaka Sun was employment under a contract of service. McKay was unjustifiably dismissed, and entitled to pay for holidays which she said she never took<sup>4</sup>.

The moral of the story is that if you wish to work alongside family members or a spouse, it is first important to ascertain if there is an employment relationship. *Wanaka Pharmacy* is an important reminder that if a family member or spouse is an employee, they will have the same rights as any other employee. It also means that if things go pear shaped in

<sup>1</sup> *Dillon v Tullycrine Ltd* [2020] NZEmpC 52, [2020] ERNZ 125, at 32.

<sup>2</sup> *McKay v Wanaka Pharmacy Ltd* [2020] NZERA 230

<sup>4</sup> McKay was awarded \$ 57,334.24 which was reduced on appeal to the Employment Court, to \$41,378.11 together with interest

**Authority releases two vaccination determinations**  
(Continued)

the personal relationship, the employing party cannot simply terminate the employment relationship, however difficult it will be to not let one relationship interfere with the other.

**Want to know more?**

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