When do “chores” become paid “work”?

by: Anthony Drake, Partner

Search articles...

New Zealand is a country of predominately small to medium sized businesses, many of which are family run which in turn generally means everyone 'pitches in' - mum, dad, grandma, and the kids - on a needs must basis. It is common for migrant owners of restaurants and takeaways to ask their children to work the front-of-house, or the till, because their children have the necessary language skills. The same situation applies to children who grow up on farms. Many families that operate farms expect their children to help milk, feed out, hand feed the calves, muster the sheep at shearing time, or help with haymaking. There are probably many more similar examples. However, while the children's labour generates economic benefit for their family, the children are often not paid. Rather it's an expectation that they'll just 'help out' the family unit. But how should we really treat these situations? Are they chores or employment?

Recently the Employment Court ruled in the Gloriavale case (*Courage v Attorney-General*) that 3 former members of the Gloriavale Christian Community were employees and not volunteers under the Employment Relations Act 2000. The Court approached its analysis by separating the treatment of the claimants into three age groups: from 6 to 14 years old, 15 years old, and 16+ year old. At all stages, the Court found the claimants were in an employment relationship.

The Court found that children as young as 6 years old would be required to carry out unpaid "work" such as milking dairy cows, and other factory work. Gloriavale's leaders claimed that the tasks were voluntary, that the children were carrying out "chores", and that everyone in the community is expected to contribute to the community insofar as they can, including children.

In the 6 to 14 years group, the Court found that the conduct of the parties reflected a "classic employment situation" as the children were selected for particular jobs, attended specified workplaces at specific times, and worked under the direction and control of management. The work undertaken by the children could not be described as mere "chores" because of the commercial nature of the tasks, which were carried out primarily for the benefit of Gloriavale's commercial businesses. The fact that the children were not expecting to be remunerated was not determinative, and neither was the fact that the parties subjectively believed that they were not in an employment relationship at the time. The key consideration was what inference as to the real nature of the relationship could be drawn from the conduct.

In the 15-year-old group (which was called the "transitional year"), the real nature remained one of employment. The labels assigned to the work carried out - such as "vocational training"- as well as an agreement signed by the claimants was an attempt to re-characterise the work but did not change the fundamental nature of the relationship.

The 16+ year old group were required to sign an agreement to work in return for becoming an "associate partner" of the community. The Court rejected Gloriavale's argument that the work was voluntary and found that the labour was not offered as a matter of free choice. The work was carried out for a reward – in exchange for food, shelter, and a place within the community. The Court was satisfied that the fundamental nature of the relationship was employment because the elements of control remained present, and the work performed was for the benefit of the Gloriavale businesses.

The importance of chores for kids is well recognised. Equally rewarding children by paying them might incentivise them to help or teach them that working pays. However, the Court's decision in this case may have inadvertently captured children providing help in their family businesses, which is arguably a very different situation from the one presented in this case. It remains to be seen what approach the Court might take in such a situation.

Download this article in PDF format

Wynn Williams Auckland
Level 25, Vero Centre, 48 Shortland Street, Auckland 1010, New Zealand. PO Box 2401, Shortland Street, Auckland 1140.
+64 9 300 2600
email@wynnwilliams.co.nz

Wynn Williams Christchurch
Level 5, Wynn Williams House, 47 Hereford Street, Christchurch 8013, New Zealand. PO Box 4341, DX WX11179, Christchurch 8140.
+64 3 379 7622
email@wynnwilliams.co.nz

Wynn Williams Queenstown
Level 2, Te Nuku Building, 43 Ballarat Street, Queenstown 9300, New Zealand. PO Box 323, Queenstown 9348.
+64 3 379 7622
email@wynnwilliams.co.nz