

# Workplace law



Having examined the facts and conditions of the case using common law testing and reasoning, it is conclusive that Johnny is likely to be recognised as a contractor and is able to rely on the verbal promise for the annual increase of hourly rate. Statutory Provision Under the Fair Work Act 2009, Section 15(1), the ordinary definition of an employee “reference to a person who is usually such an employee and does not include a person on a vocational placement” (Fair Work Act, 2009). This definition does not assist us in identifying Johnny as an employee or an independent contractor.

To determine, several tests can be used. Control Test Control test stipulate that if a person is an employee, the employer has the right to not only state what needs to be done (command), but also how it should be done (control). Nature of control and degree of control are two essential elements in this test. In *Federal Commissioner of Taxation v J Walter Thompson (Aust) Pty Ltd*, the High Court of Australia concluded that the artists engaged to perform plays were employees as the producer exercised detailed and extensive control of the artists during rehearsals and final performance (van der Waarden, 2010).

In the case of *Zuijs v Wirth Brothers Pty Ltd*, the High Court found that the injured circus trapeze artist during performance were employee after applying the broad control test. The court concluded that even though the trapeze artists had control over the precise timing and method of performance of the act, they are subject to the direction of their employer in most aspects of work (van der Waarden, 2010).