

Two national companies face court over alleged sham contracting

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The Fair Work Ombudsman has launched a prosecution against two companies for alleged sham contracting activity affecting thousands of call centre workers and door-to-door salespeople.

Facing court are Telco Services Australia Pty Ltd and Trimatic Contract Services Pty Ltd, which both operate nationally.

Documents lodged by the Fair Work Ombudsman in the Federal Court in Melbourne allege the two companies have contravened sham contracting provisions of workplace laws in relation to salespeople working in all states and territories in Australia.

It is alleged that from 2006-2009, almost 10,000 salespeople were incorrectly classified as independent contractors when they should have been classified as employees.

Since 2004, Telco Services Australia has been contracted by Telstra to provide direct marketing and sales services, and the workers' primary role was to market Telstra products and services.

The Fair Work Ombudsman's prosecution comes after an extensive investigation, which included simultaneous unannounced inspections of call centres in Perth, Melbourne, Brisbane, Sydney and Adelaide.

"We are alleging the workers followed managers' directions and had little or no freedom over fundamental matters such as their work hours and how they performed their duties," Fair Work Ombudsman Executive Director Michael Campbell says.

"Therefore, it is our position that these workers were clearly employees, not independent contractors."

The Fair Work Ombudsman claims Telco Services Australia and Trimatic Contract Services have committed numerous contraventions of workplace laws.

The maximum penalty per breach is \$33,000. The case is listed for a directions hearing on June 24.

Mr Campbell says all employers should realise that just because a worker has an ABN and has been labeled a contractor does not necessarily mean they can legally be classified as a contractor.

"Sham contracting occurs when an employer disguises or misrepresents an employment relationship as an independent contracting arrangement," he said.

"Where we suspect sham contracting is occurring, we look behind the documents and apply workplace laws to determine the true state of affairs.

"It is vital we ensure workers are classified correctly because if they are incorrectly classified as independent contractors they can miss out on employee entitlements such as minimum rates of pay and leave entitlements."

The Fair Work Ombudsman is currently conducting a national education and compliance campaign targeting sham contracting.

Employers and workers seeking advice or assistance regarding independent contracting and sham contracting can visit the Fair Work Ombudsman's website at www.fairwork.gov.au/contractors (www.fairwork.gov.au/find-help-for/independent-contractors)

They can also contact the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50.

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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