



A VL real life claim example

# Employment Disputes

## Child (lack of) Care

The Insured was a childcare centre operator. An employee was suspended from work following an incident where a child had fallen over in the sandpit causing facial injuries. The child became sleepy, disoriented and was displaying behaviour totally out of character after the accident. Rather than seeking further advice from a senior teacher, the employee simply put the child to bed. The Insured found the actions of the employee unacceptable and in clear breach of the centre's health and safety policy and procedures.

With disciplinary proceedings under way, the employee sought legal advice. A personal grievance claim was lodged. The matter was heard at mediation before a Labour Department mediator, which resulted in a settlement for compensation under section 123 (1)(c)(i) of the Employment Relations Act 2000. The Employers Liability policy indemnified the Insured for damages and legal costs in respect of this claim.

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## Contractor/Employee

The Insured was a medium sized manufacturing firm. It employed its own IT technician. The Insured's General Manager decided that the employee would better serve the company if he was engaged as a contractor for his services and a verbal agreement was entered into whereby the "employee" moved to totally flexible work hours and submitted invoices for his time. He also took care of his own tax, GST, ACC etc.

The Insured subsequently replaced its General Manager and the new General Manager decided on a complete review of its IT services. The informal nature of the "employee's" contract was overlooked. A consultant was asked to undertake a study working with the "employee" in preparing his report. The "employee" saw the writing on the wall when it became evident that the consultant was likely to recommend a full scale outsourcing of the firm's IT. It was clear that his services would no longer be required. With legal advice, he lodged a personal grievance claim against the Insured on the basis that he was an employee.

Following independent legal advice, the "employee" had to be deemed to be just that - an employee. Despite the contract arrangements had been in place for over nine months; there was no formal contract in place. The parties came to an agreed settlement.

There were issues of indemnity because if the claimant had been a contractor, then Employment Disputes insurance would not be applicable. The legal costs were substantial.

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