

## Gloriavale – a cautionary tale

**Chief Judge Inglis has made it clear for the second time that "the tail will not wag the dog" when it comes to the employment status of former Gloriavale residents.**

Last week, she held that six former female Gloriavale residents were employees and therefore entitled to minimum employment protections.

Inglis said that while "requiring the application of minimum employment standards to individuals who had previously not been perceived as benefitting from such entitlements" may present issues for Gloriavale, this wasn't a reason not to apply the standards.

This follows the Chief Judge's decision in May 2022 that three former male residents of Gloriavale were employees from the age of six until they left the community. In confirming that a person 'working in slave-like conditions' may still fall within the definition of employee, Inglis noted that:

*"It would be ironic if those suffering from the worst workplace abuses were unable to bring their claims to the Employment Court because the level of abuse (the tail) wagged the dog (a finding of employment status)."*

Employing or using any person as a slave is a crime that attracts up to 14 years in prison but whether or not that crime has occurred in these two decisions is for another Court. The Employment Court's role in these cases was to determine whether the former residents were employees. Recognition of their employment status would give the former residents access to a suite of minimum worker entitlements and protections including minimum wage, holiday pay and KiwiSaver.

### The Women's Case

Six former female residents of Gloriavale brought a claim in the Employment Court for recognition of their status as employees during their time working in the community between 2017 and 2021.

Gloriavale is a Christian community set in an isolated location on the West Coast of the South Island that has limited contact with the outside world. The women were born and raised in the community, which describes itself as 'self-sustaining', that operates under a strict set of beliefs, including that residents must contribute by working and cannot handle their own finances.

It is a patriarchal community with a strict hierarchy. The Overseeing Shepherd is the principal leader of the Gloriavale community. Hopeful Christian, who in 1995 was sentenced to prison for sex offences against young women at Gloriavale, was the Overseeing Shepherd during much of the time that this case concerned, until he died in 2018. Howard Temple is his successor and the current Overseeing Shepherd.

From a young age (around six) each of the women carried out work within the community, progressing to full time work, cleaning, washing, sewing and cooking for the community in accordance with a roster, in the teams as soon as they left school, around the age of 15. Collectively the teams produced 11,000 meals and washed more than

17,000 items of clothing per week supporting both the community and its business endeavours, which include a honey-making plant, large-scale dairy farm and a pet food business.

The Gloriavale defendants denied that the women were employees and claimed that they were 'volunteers' on the basis that the work was conducted as an expression of their religious commitment to live in a communal setting or, alternatively, that they were conducting domestic work as part of a 'bigger family'. They claimed that a finding of an employment relationship would be incompatible with the true, religious nature of the relationship.

The Employment Court disagreed and found that the work was 'grinding, hard, unrelenting, and physically and psychologically demanding' that has left "deep scars" for the plaintiffs. If the women refused to do the work without good reason, they would suffer consequences including, in extreme cases, being expelled from the community and shunned by their family and friends.

### **The Men's Case**

"The Men's Case", as Chief Judge Inglis referred to it, involved three former male residents who claimed they were employees and deprived of minimum working standards. The men claimed that they were required to work long hours, under harsh conditions, from the age of six until they left the community with minimal leave.

Gloriavale claimed that the work carried out by the men was chores, then work experience and later work done in accordance with a Partnership Agreement for which they received payment as 'drawings' made into a nominated account, which was automatically paid back out again and into the Gloriavale shared account.

The men said that they had no choice but to sign the documents agreeing to this arrangement and that there would have been consequences for them had they refused to. They drew a picture of a highly controlled, authoritarian environment that did not permit dissenting voices, and which corralled obedience through fear. They said that they were born into Gloriavale, were indoctrinated into a way of thinking from birth, knew no other way of life, and could not be said to have voluntarily consented to the work they were required to do by the Gloriavale leadership group, or the conditions under which they worked.

The Employment Court ruled that the men were employees from the age of six. Chief Judge Inglis rejected the claim that the work was 'chores' and noted that it was clear that "the ready access to child labour constitutes a significant factor in the success of the Gloriavale business model." The evidence squarely pointed to the plaintiffs' work during this period being geared towards the utilisation of the 15-year-old male work force to meet the commercial needs of the Gloriavale business enterprises.

She said that "the fact that work practices take place within a religious community with a particular view on how it should operate, and the principles under which it will function, does not mean that those work practices are beyond the reach of the law." The underlying intent of the law was to prevent employers avoiding employment protections by using agreements which placed form over substance. The men were, in substance, employees taking into account the control, power and direction that the Gloriavale leadership held over them.

## The women were also employees

Following a lengthy hearing held between August 2022 and February 2023, Chief Judge Inglis has now also reached the view that the women were employees. Importantly, she emphasised that an approach which recognises the protective purposes of the Employment Relations Act 2000 and the minimum standards that sit around it is appropriate when considering the question of whether a worker is able to pass through the employee gateway.

She found that the real nature of the relationship with the women was an employment relationship having regard to a range of factors such as the nature of the work (which was of a sort which would generally be paid for), the nature of the facilities in which they conducted the work, which included commercial grade kitchens, and the significant direction and control exerted on them in their work. She said that:

*"Based on the evidence before the Court, that the plaintiffs did their work on the Teams, which admittedly benefitted the Community, because that is what they were told to do; what each of them had been trained to accept from birth; and the consequences of not doing what was expected (namely falling "out of unity") were dire and well known – exclusion from the Community, from all that was familiar, from family and friends, and into a world they know little about, were ill equipped to navigate and had been taught to fear."*

Specifically she found that:

- They were not volunteers because they received reward for the work, which was being permitted to remain in the community with their family and friends, to continue to lead a life they were familiar with and to receive housing, food and spiritual guidance.
- The fact that the type of work they did was 'domestic' in nature did not assist in determining whether they were employees or not and the Court did not accept that the work was carried out for each of the plaintiff's family members or some notional big family.
- The finding that they were employees would not be incompatible with the community's chosen way of life as freedom of religion as protected in the New Zealand Bill of Rights Act 1990 is subject to general laws, including employment law.

The community's ability to pay wages was not relevant to determining employment status and, if the payment to women was approached in a similar way to the men, the effect would be circular. They would be repaying the money back to the Gloriavale community but with potential tax implications, such as PAYE, ACC levies and the like, and other potential implications (such as holidays and sick leave). She noted that:

*"A deeply held belief as to whether someone is or should be an employee is not the acid test for determining employment status mandated by the Act. If it was, the protective purpose of the gateway provision, and the minimum worker entitlements and protections which flow from it, would be seriously undermined."*

## How is the Gloriavale decision relevant to your organisation?

The Gloriavale decisions follow the Employment Court's decision in October 2022 confirming that Uber drivers are employees not independent contractors. The decision highlighted the growing risk that companies using contractors may be in breach of minimum employment standards, and is now under appeal.

Both cases show a willingness by the Court to look behind the arrangements in place between the parties to determine the true nature of the relationship. This may have a significant financial impact on organisations that have arrangements in place, including volunteer arrangements, independent contractor arrangements, gig workers, or complex legal structures that don't reflect the substance of the relationship, and that ultimately results in workers being deprived of minimum employment conditions.

Further, the Government is currently considering a regime to combat modern slavery as exploitative work practices remain prevalent in our supply chains. Modern slavery is defined as severe exploitation of a person who cannot leave due to threats, violence or deception.

If you need assistance with any employment matters, please contact our employment team.



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