

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2026] NZERA 352  
3356783

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| BETWEEN | CLAUDIA MOREIRA<br>First Applicant            |
|         | LAURA JIMENEZ<br>Second Applicant             |
| AND     | RENEW WELLNESS PLACE<br>LIMITED<br>Respondent |

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| Member of Authority:                          | Matthew Piper  |
| Representatives:                              | Paul Pa'u, advocate for the First and Second Applicant<br>Alastair Espie and Bridget Craig for the Respondent                  |
| Investigation Meeting:                        | On the papers  |
| Submissions and further information received: | 11 November 2025, 4 December 2025 and 9 March 2026 from the Applicant<br>28 November 2025 and 9 March 2026 from the Respondent |
| Determination:                                | 8 June 2026  |

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Renew Wellness Place Limited (Renew) operates a wellness treatment centre in Parnell, Auckland. Claudia Moreira and Laura Jimenez were each engaged by Renew pursuant to independent contractor agreements to undertake a range of activities for Renew.

[2] Ms Moreira and Ms Jimenez say that the real nature of their relationship with Renew was one of employment. This determination resolves the preliminary question of whether Ms Moreira and Ms Jimenez were employees of Renew.

[3] Ms Moreira and Ms Jimenez each claim to have other personal grievances arising from their relationship with Renew that can only be pursued if the Authority determines that they were in fact employees.

### **The Authority's investigation**

[4] The Authority's investigation of this preliminary matter was undertaken on the papers, with affidavit evidence lodged from the applicants, Ms Moreira and Ms Jimenez, Renew's director Darren Risetto, consultant Matthew Williams, Natalie Pejcic and, Betiana Marquez. The representatives also lodged submissions and additional information when called for by the Authority.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **The issues**

[6] The issues requiring investigation and determination were:

- (a) Were Ms Moreira and Ms Jimenez employed by Renew?
- (b) Should either party contribute to the costs of representation of the other party.

### **Background**

[7] Renew is a health and wellness clinic offering saunas, red light therapy, compression therapy and other wellness treatments.

[8] Ms Jimenez is a Colombian national, who moved to New Zealand in 2016. Since then, she has been employed in a range of roles, including another where she was a contractor. Ms Jimenez has completed a physiotherapy degree, a diploma in Business Healthcare Management and has a Masters degree in Clinical Practice in Nursing, which she pursued while working at Renew.

[9] Ms Moreira is originally from Portugal and has been living in New Zealand for 18 years. She has a bachelor level qualification, has held a number of roles as an employee in New Zealand and is a qualified Zumba Fitness Instructor.

[10] Although preparatory work was undertaken in the preceding months by Mr Risetto, in December 2023 Renew was gathering the momentum to begin trading and this is when Mr Jiminez began working with the business to facilitate its opening. This work continued through January 2024 and on 9 February 2024 Mr Risetto sent Ms Jiminez and Ms Moreira proposed independent contractor agreements. These documents are discussed in more detail below.

[11] Although Ms Jiminez and Ms Moreira are both applicants in these proceedings, they did not perform identical work for the clinic.

[12] Ms Jiminez's work involved in setting up the Renew clinic with Mr Risetto and then went on to undertake clinic and client management tasks, which included developing the roster for contractor hours, training new joiners and overseeing the clinic administration.

[13] Ms Moreira was a customer service manager and said that it was her first time being a contractor. Her duties involved training staff, managing customer queries and bookings, cleaning the spaces used by customers, managing the staff roster, undertaking regular weekly maintenance of the facility and, supporting with improving forms and internal processes.

#### *Overview of what happened in the parties' working relationship in 2024*

[14] In early 2024 while the business was initially being set up, Mr Risetto was involved in a reasonably hands-on way, but from about May 2024 his direct involvement decreased.

[15] From February 2024 onward, Mr Williams assisted Renew in carrying out market analytics and building a pricing model for the business. He provided advice on these and other issues on a "support and consulting" basis but was not an employee or director of Renew, nor was he directly involved in its day-to-day operations.

[16] By June 2024, it had become apparent to Mr Risetto and Mr Williams that it was necessary to take steps to manage Renew's finances and rostering arrangements. In the ensuing discussions which took place in the latter part of 2024, Ms Jimenez and Ms Moreira attempted to demonstrate that the pricing model and other commercial factors including the services offered needed to change. However, Renew formed the view that there were issues with how Ms Jimenez and Ms Moreira had been allocating hours. In particular, Renew considered that contractors were being rostered in a way that exceeded the needs of the business.

[17] This led to discussions in September and October between the applicants, Mr Williams and Mr Risetto about changing the way hours were set, to better meet the needs of the business.

[18] In October 2024 Mr Williams met with Ms Jimenez and said that Renew was reviewing its contracting arrangements, and that it was considering moving to an employment-based model, rather than utilising contractors.

[19] During November and December 2024 Mr Williams had discussions with Ms Jimenez and Ms Moreira, among others, to address the business' resourcing needs and whether certain contractors would be transitioned into employment roles with confirmed minimum hours at set times, unless anyone has a preference for remaining a contractor.

[20] Conversations regarding the proposed changes to hours and the reasons for poorer than expected financial performance became emotional, and both applicants terminated their agreements with Renew in December of 2024.

#### *Ms Jimenez's engagement*

[21] When Mr Rossitto sent Ms Jimenez a proposed independent contractor agreement she did not negotiate any terms or raise any issues with the proposed agreement. Ms Jimenez's said she accepted the role as a contractor and that from the start of her engagement was working 40 or more hours a week. She said she signed on as a contractor with the understanding it would eventually be changed to an employee position.

[22] Ms Jiminez said she was introduced to Renew as a “project” and that in January 2024 Mr Risetto asked her to organise the clinic, prepare documentation for opening and assist with staff coordination and marketing.

[23] Ms Jiminez’s said the role was offered to her “initially” on a contractor basis with the potential to transition to an employee role once the business opened. Ms Jiminez’s evidence in this regard demonstrates that at least at the start of her working relationship with Renew there was a common understanding between her and Renew that she was an independent contractor.

[24] Ms Jiminez said, which was denied by Mr Risetto, that representations were made that she would eventually be made an employee. Mr Risetto said that he only ever considered Ms Jiminez to be an independent contractor.

[25] Ms Jiminez said that in casual conversation with Mr Risetto about three months after she started, he told her she would become an employee once the business became profitable. However, she also told the Authority that Mr Risetto “often told me that the company couldn’t afford to hire us as full-time employees”. Ms Jiminez said she accepted that her contract was “never officially changed to full-time”.

[26] Mr Risetto said that he met with Ms Jiminez and Mr Williams on 11 April 2024 and that at this meeting Ms Jiminez agreed that she would continue as an independent contractor because it suited her ability to schedule and accommodate her nursing studies and placement requirements. Mr Risetto said that Ms Jiminez did not dispute her status or raise concerns during this meeting.

#### *How work was performed by Ms Jiminez*

[27] Ms Jiminez’s work at Renew was her only job and she said she was always available to handle problems that emerged, including if other staff cancelled or there were not enough team members scheduled. She regarded herself as a general manager who had helped Mr Risetto build the business “from scratch” and said she would undertake general duties such as running errands, purchasing supplies, attending meetings or undertaking administrative tasks while also managing her studies.

[28] Mr Risetto said that Ms Jimenez also initially intended to provide lymphatic massage for clients and supplied her own massage chair in this regard, but as her work progressed, she focused more on administrative tasks.

[29] Mr Risetto said that Ms Jimenez had no contractual entitlement to any particular hours or guaranteed days of work. He said she was not compelled to accept any offer of work and was free to reject hours as she wished. He said that Ms Jimenez carried out different hours to accommodate her nursing study and placement at the hospital because she was able to choose her own hours.

[30] Mr Risetto was not aware of the detail of what Ms Jimenez's work or hours involved. He said she would give high level updates on how the clinic was going, such as what promotions were working but that he was not close to day-to-day operations. Mr Risetto said that in his view any other work she undertook to improve the way the clinic was working were of her own initiative.

[31] Ms Jimenez said she told Mr Williams that it was difficult working with Mr Risetto because he "often insisted on doing things his own way and didn't listen".

*Ms Jimenez is given a ticket to travel to Australia*

[32] In around Easter of 2024 Mr Risetto paid for a ticket for Ms Jimenez to go on holiday to Australia as a way of thanking her for the work she had put in to opening Renew.

[33] In addition, in October 2024, Ms Jimenez asked to be supported while she undertook exams, and was granted 5 days' of "paid professional development" time. This time was taken in late November 2024. In the email confirming she would take this time Ms Jimenez also said she planned to take a few days off in December and that "As a contractor, I believe I'm allowed to notify you 4 weeks in advance. Is that correct?".

*Ms Moreira's engagement*

[34] Ms Moreira started work with Renew on 12 February 2024. The week before she started work, Ms Moreira met with Ms Jimenez who explained how the business worked and what she would need to do in her role. She was given keys to the clinic, a

uniform and the opening and closing hours were explained. Ms Moreira only met Mr Risetto a few weeks later and said that in practice she reported to Ms Jimenez.

[35] Ms Moreira was initially content to be engaged as an independent contractor, and sought advice from a friend regarding being engaged in that way. After receiving her independent contractor agreement, she negotiated to be paid time and ½ if she worked on public holiday and have at least one day off per week. Mr Risetto agreed to these changes. Despite these negotiations and changes to her contract, Ms Moreira told the Authority she was not familiar with her rights or the nature of the contract because this was the first time she had been a contractor.

[36] Ms Moreira said that she was willing to be an independent contractor because she was an urgent need of income. She said that she was told by Mr Risetto that her contractor agreement would be reviewed and that it would change to her becoming a permanent employee. Mr Risetto said that he was always clear that Ms Moreira was an independent contractor and said that he had very limited direct engagement with Ms Moreira while she performed work for Renew.

#### *How work was performed by Ms Moreira*

[37] Between February and August 2024, Ms Moreira worked between 43 and 45 hours each week. In August 2024 Ms Moreira went on holiday for about a month, and after she returned, she worked an average of 27 to 30 hours per week until her work at Renew ended in December 2024.

[38] In his affidavit Mr Risetto said that Ms Moreira appeared to have undertaken additional duties that were not required of her by her contract. Some of these duties, such as roster creation and recruiting or training new team members were supposed to be work performed by Ms Jimenez. Others, including creating standard operating procedures, business templates and assisting with social media, were said by Mr Risetto to have been undertaken by Ms Moreira at her own initiative.

[39] In about June or July Ms Moreira asked for an update on her request to become a permanent employee. By this time she had been working full time hours for about four months. Mr Risetto told her that he wasn't ready to change the contract, but he understood she would value financial assistance when taking her holiday.

### *Payment when Ms Moreira went overseas*

[40] Ms Moreira went on an overseas holiday to visit family for a month in August 2024. After a discussion with Mr Risetto about whether she would be paid while she was away, she emailed him on 6 June saying “[...] *I’m very excited but also very thankful for you offering to cover my pay while I’m away. That is very generous of you and very much appreciated*”.

[41] As it transpired, there had been a misunderstanding between Ms Moreira and Mr Risetto who had not intended to cover her pay for the whole time she was to be away. Rather he wanted to help her with pay while she was away so she could cover her expenses.

[42] Ultimately Renew paid Ms Moreira the equivalent of 9 days’ pay while she was away, which is similar to what she may have accrued in annual leave by that time. The payment was said to be an ex-gratia goodwill gesture, and in the email describing it this way it was reiterated to Ms Moreira that she was an independent contractor and that the parties needed to be clear on this going forward. Ms Moreira responded to this message by email saying “*I understand and accept your generosity and goodwill, much appreciated.*”

[43] Ms Moreira said that during September to December 2024 Ms Jimenez would send her home in the middle of her shift if it was not busy. She said she earned less than usual during this three-month period.

### *How the applicants were paid*

[44] Both applicants rendered invoices to Renew for payment, generally every two weeks. The invoices reflected the hours that they said they had worked. Ms Jimenez also had an accountant.

### *Rostering arrangements*

[45] Mr Risetto’s understanding was that Renew’s contractors would request the hours they want to work and then Ms Jimenez would have oversight of rostering. He said that neither applicant was guaranteed 40 hours of work per week and that there was no contractual entitlement or guarantee to hours, and no set days of work. Mr Risetto said Ms Jimenez and Ms Moreira could reject any hours they wished.

[46] Accordingly, Mr Risetto did not manage the rostering of contractors closely, and instead left this work to Ms Jimenez to undertake, which from time to time caused him some concern where he considered it was not being executed in an efficient way. He said he was aware at a high level of what Ms Moreira's work involved but wasn't across her day-to-day activities or for how long she would perform them in a given day or week. Mr Risetto said that he had very limited contact with Ms Moreira during her work for Renew.

[47] Ms Jimenez had considerable control and influence over the hours she, Ms Moreira and others were rostered to work. I find it likely that although they initially consistently worked forty hours per week, they were free to accommodate other obligations, whether work, study or personal as they saw fit.

#### *Uniforms*

[48] Both applicants wore a uniform when they worked for Renew.

#### *The written agreements*

[49] Both Ms Moreira and Ms Jimenez had short written agreements each of which entitled "*Contractor Agreement*". The agreements were materially the same, with the exception of the differences set out below.

[50] Ms Jimenez's agreement said she was to "*assist as the Clinic Manager*" and that she would undertake responsibilities "*including but not limited to*" overseeing the day-to-day running of the clinic, its services and its rostering. She was also responsible for maintaining standards, quality assurance, conducting and administering team meetings and providing support to staff members as needed.

[51] The "Payment" clause in Ms Jimenez's agreement said:

**4. Payment:** Renew Wellness Place Limited agrees to compensate Laura Mejia Jimenez at a rate of \$40 per hour for the Services rendered as Clinic Manager. Laura Mejia Jimenez shall receive a payment of \$60 per hour when conducting Lymphatic massage. Any additional hours worked beyond 40 hours per week shall be compensated separately at the same rate of \$40 per hour and \$60 for Lymphatic Massage. Payment shall be made on a fortnightly basis, subject to receipt of a valid invoice from Laura Mejia Jimenez.

[52] Ms Moreira's agreement said she would "assist as the Clinic Customer Services Supervisor" and would undertake responsibilities "including but not limited to" those relating to reception duties, administrative tasks and clinic support.

[53] The "Payment" clause in Ms Moreira's agreement said:

**4. Payment:** Renew Wellness Place Limited agrees to compensate Claudia Moreira at a rate of \$35 per hour for the Services rendered as Clinic Customer Services Supervisor. This hourly rate includes an additional payment to cover car parking expenses. Any additional hours worked beyond 40 hours per week shall be compensated separately at the same rate of \$35 per hour. If required to work Public Holidays Claudia Moreira will be paid time and a half. Payment shall be made on a fortnightly basis, subject to receipt of a valid invoice from Claudia Moreira. Renew Wellness Place Limited will ensure at least one day off per week is granted unless not required by Claudia Moreira.

[54] Each agreement had an initial term of three months, after which the agreement would continue indefinitely unless four weeks' notice was given by either party of termination.

[55] Each agreement specified that Ms Moreira and Ms Jimenez respectively acknowledged and agreed they were an independent contractor and not an employee and were to be solely responsible for all "taxes, contributions and obligations arising from her performance under this Agreement".

[56] The agreements required Ms Moreira and Ms Jimenez to comply with laws, company guidelines and policies, maintain confidentiality of confidential information and said that any intellectual property created or used in the course of working for Renew belonged to Renew.

[57] Ms Jimenez's agreement also said she would create and implement company guidelines and policies in a manner consistent with best practice and regulatory obligations.

[58] Renew agreed to indemnify Ms Moreira and Ms Jimenez in relation to any third-party claims arising out of their performance of the work, and the agreements were said to be the entire agreement between the parties, capable of modification only by variation in writing.

[59] Neither Ms Moreira nor Ms Jimenez's agreements contained a minimum number of guaranteed hours, nor did they say when work must be carried out.

[60] Neither Ms Moreira nor Ms Jimenez ever and entered into written employment agreements with renew.

*How others were engaged*

[61] Two other individuals who worked for Renew provided affidavits to the Authority being Ms Marquez and Ms Pejic.

[62] Ms Marquez provided evidence that in addition to her own business she undertook contracting work for Renew and had been doing so since June 2024. Ms Marquez said that she had approached Ms Jimenez about whether any work was available and was told they weren't looking for a health coach, which was Ms Marquez's specialty, but that there may be some reception work available and this might lead to health coaching work later.

[63] Ms Marquez's affidavit said that she and Ms Jimenez discussed the contracting arrangement which Ms Jimenez described as very flexible and one where she could work only a few hours if she wanted. She told the authority that Ms Jimenez was clear with her that she was an independent contractor and would need to do her own invoices and pay her own taxes. There was discussion regarding the appropriateness of a particular app which Ms Marquez used for tax purposes and Ms Jimenez said it would be acceptable to Renew.

[64] Ms Marquez told the authority she would let Ms Moreira know of her availability and she would be rostered on, usually in the afternoons. She said she understood both Ms Jimenez and Ms Moreira were undertaking work to set the rosters and that she was not guaranteed any hours.

[65] Ms Marquez said that in around September or October 2024 she had additional time available and asked for more work but that Ms Jimenez told her she was a contractor and they didn't need to give her more hours. She said that Ms Jimenez would from time to time cancel her shifts on the basis that she was a contractor and could be told she wasn't needed so she could go home.

[66] Ms Marquez said she was confident Ms Jimenez knew what it meant to be an independent contractor because Ms Jimenez had explained it to her.

[67] Ms Pejic had another professional role as her primary source of income, that provided intermittent work, often at short notice. She started working for Renew performing customer service and clinic support tasks in March 2024.

[68] Ms Pejic left Renew in May 2024 and recommenced work in December 2024. She said Ms Moreira had called her to help out as a contractor for Renew and she liked the contracting model because it meant she could prioritise her other role because she could choose her shifts at Renew.

[69] Ms Pejic said she worked only as much as she wanted and that she considered Ms Moreira and Ms Jimenez had controlled the roster in a way that prioritised themselves. She told the Authority that when she was starting Ms Moreira “sold” her on the flexibility that comes with being a contractor.

[70] Ms Pejic said that when working a shift alone, beyond reporting how things were going with bookings or what sales had been made, it was not necessary to report much else to Ms Jimenez and she did not hear from Mr Risetto often, if at all.

## **Analysis**

### *Relevant law*

[71] Section 6 of the Act defines an employee as a person employed by an employer to do any work for hire or reward under a contract of service. The section then requires the Authority, in deciding whether a person is an employee, to determine “the real nature of the relationship between them”.<sup>1</sup>

[72] In making this assessment the Authority must consider all relevant matters, including matters that indicate the intention of the parties, but must not treat any label applied by the parties as determinative of the nature of their relationship.<sup>2</sup> This is a reference to ascertaining the parties’ common intention about the substance of their mutual rights and obligations, objectively ascertained.

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<sup>1</sup> Section 6(2) of the Employment Relations Act 2000

<sup>2</sup> Section 6(3) of the Employment Relations Act 2000

[73] These statutory provisions are informed by the caselaw which has developed on the topic, which establishes principles for determining the “real nature” of the relationship. The inquiry into the “real nature” of the relationship is intensely factual. It turns on what a reasonable person would understand the substance of the relationship to be.

[74] There is no particular methodology or framework prescribed for the Authority’s analysis, but normally it will be appropriate to establish the terms of the contract and its workings in practice, before deciding whether the relationship is one of employer and employee.<sup>3</sup> Accordingly, it is appropriate for the Authority to first consider the parties’ mutual rights and obligations as set out in any contractual documentation, then review any divergence from these documents apparent in the way the relationship worked in practice.

[75] The Authority then applies the tests as articulated by the Supreme Court in *Bryson v Three Foot Six Limited*<sup>4</sup> for analysing the “real nature” of the relationship. These are the “control test”, the “integration test” and the “fundamental or economic reality” test.

#### *The real nature of the relationship*

[76] As noted above, the analysis of the real nature of the relationship has been regularly observed by the Courts and the Authority to be factually intensive. A given fact pattern may have factors that could be interpreted as either tending to show a relationship of employment or that the parties were independent contractors. This is true here because the applicants performed work which could readily have been performed by employees.

[77] Of particular salience in assessing whether Ms Jimenez and Ms Moreira were employed by Renew is understanding the operating environment in which they worked. Renew was a new business. Mr Risetto and Ms Jimenez worked together during its embryonic stages to establish its systems and ways of operating.

[78] It was in this context that each of the applicants entered into their independent contractor agreements and that the parties’ mutual obligations were formed. At the start

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<sup>3</sup> *Rasier Operations BV v ETU Incorporated* [2025] NZSC at para [75]

<sup>4</sup> [2005] NZSC 34

of the working relationship, evidence was given of a common understanding between each applicant and Renew that the parties were in respective independent contracting relationships.

[79] Although it remains within the gift of the Authority to find that the relationship was not, in fact, one of independent contractor and principal, I consider it to be relevant that neither applicant was unsophisticated or duped into the arrangement and there was a relatively even power dynamic between the parties, shown by the fact contractual terms were not offered on a take it or leave it basis. The contracting relationship appears to have been built in the context of shared aspirations to build a boutique wellbeing clinic. This scenario is distinct from a large company engaging a multitude of individuals on contractual terms that are weighted heavily in one party's favour.

[80] In such circumstances, where the parties have commenced their relationship by negotiating a written contract and have not materially diverged from it in practice, the contract should be given weight as a source of ascertaining intention.

*Written and oral terms of contract between the parties*

[81] The parties' agreements labelled the arrangement as being one of independent contracting. Although s 6 of the Act says the Authority "is not to treat as a determining matter any statement by the persons that describes the nature of their relationship", it is also correct that the Authority should not lightly set aside any label applied by the parties to themselves.<sup>5</sup>

[82] Each applicant appears to have understood the terms of their contract when it was proposed by Mr Risetto, and Ms Moreira negotiated adjustments to the proposed terms, which were agreed to. It is notable that despite their respective experience as employees in New Zealand, neither sought to include employee entitlements such as leave or KiwiSaver in the agreements as would have been the case if they had been negotiating for terms and conditions of employment.

[83] I do not regard Ms Jimenez or Ms Moreira as having been vulnerable to being pressured to take on work or particular conditions of engagement. Each had worked in New Zealand for a number of years, each has higher level qualifications and

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<sup>5</sup> *Chief of Defence Force v Ross-Taylor* [2010] NZEmpC 22 at [30].

demonstrated aptitude for the work they performed for Renew. The contracts could not be fairly described as “window dressing” or documents that should be put to one side on the basis they disguise the real nature of the relationship.

[84] The rights and obligations created by the agreements entered into by each applicant and the respondent share some similarities with an employment relationship. A location of work was specified, as were duties, rate of pay, confidentiality obligations and that intellectual property remains under Renew’s ownership.

[85] However, that the terms covered similar subject matter to matters that would be included in an employment relationship does not mean that the parties were not principal and contractor, particularly where capable parties label themselves in that way. The agreement did not require exclusivity or particular hours of work and each applicant was free to undertake whatever other work or activities they wished. The agreement also did not prevent either applicant from sub-contracting the services they provided.

[86] I am reluctant to put the labels the parties applied to themselves to one side.

*Divergence from terms?*

[87] I now turn to consider whether there has been divergence from the contractual documents between each applicant and Renew reflected in the way the agreement operated in practice.

[88] The description each applicant gave in their evidence of the work they actually performed is materially similar to that described in each of their contracts. Although there were some additional activities performed by each applicant, they were not so far outside the scope of what was agreed in each contract as to represent a divergence from it that rendered it a fiction or inadequate description of the parties’ bargain.

[89] In particular, Ms Jimenez appears to have performed her contractual duties largely as they were described in her contract with Renew. She managed day to day running of the clinic, including its services, rostering and administration. She also supported the creation and implementation of company guidelines and policies.

[90] Similarly, Ms Moiera appears to have largely performed the duties described in her contract with Renew. The evidence shows that from time to time she undertook some duties belonging to Ms Jimenez relating to rostering, however this does not appear to have been at Mr Risetto's direction. Rather it is more likely that Ms Jimenez asked for or allowed this work to be performed.

[91] Other things Ms Moiera said she did that were outside the scope of her contractual duties can be reasonably regarded as falling into the general category of ensuring the smooth operation of daily activities.

[92] The evidence also supported the conclusion that any divergence from contractual terms was unlikely to have flowed from a direction by Mr Risetto. This is important because if Mr Risetto had directed work be undertaken past the scope of agreed terms, it may have represented a level of control present in an employment relationship.

[93] The applicants placed considerable emphasis on the fact they worked consistent hours and said this pointed to their being employees. While it is true that consistent work weeks are often a hallmark of employment, how those hours are determined and by whom is relevant to the question of whether an employment relationship existed.

[94] Each applicant's contract did not prescribe particular days of work or minimum hours. Each was able to work as much as they wanted and were able to be flexible in their hours when it suited them. This way of working was consistent with the contract and not a deviation from it. It is also consistent with a lower level of control by a principal than would be seen in an employment relationship where the employer would generally determine the hours it requires employees to work.

[95] The agreements did not contain holidays entitlements, but in practice breaks were discussed and agreed between the parties. Each applicant was able to take time away from work for various reasons, including overseas travel. That the respondent provided the degree of support it did for these activities is better characterised as being a reflection of the fact that in their contractual relationship with the respondent each applicant was adding value that was needed for the respondent's new business to run.

[96] It is not unreasonable to offer incentives or generosity to purely commercial partners where they are undertaking work that is important to your business.

Considering the totality of the communications between the parties around this time, I find this is what Mr Risetto was doing when he made additional payments to Ms Moreira when she went overseas in August of 2024.

[97] Similarly, that Ms Jimenez received payment for some “professional support days” does not reflect a situation where the parties expected to benefit from holidays entitlements. This is position is reinforced by Ms Jiminez saying she was giving notice “as a contractor” of when she would she would take unpaid leave at a later time.

[98] Accordingly, I find that during each applicant’s work at Renew, there was limited divergence from the contractual documents that would indicate the real nature of the relationship was one of employment.

#### *The Control Test*

[99] Apart from at the beginning of their working relationships, when Mr Risetto was more closely involved in setting up Renew’s business, Ms Jimenez and Ms Moreira experienced a limited degree of control from Renew in how they performed their work.

[100] Evidence was lodged with the Authority that Ms Jimenez was responsible for rostering arrangements for both herself and others. Mr Risetto’s lack of control over when and how the applicants worked, particularly after May of 2024 was clear in the affidavit evidence.

[101] It was likely that this limited level of control that led to the difficulties the parties experienced when it became apparent, at least to Mr Williams, that the hours being set were greater than were necessary.

[102] Everyday work was not monitored and both Ms Jimenez and Ms Moreira were expected only to report at a high level on what was happening in the practice. In practice, each applicant operated independently of Mr Risetto, and the business paid the invoices they rendered, which is consistent with how an independent contractor would behave.

[103] Accordingly, the application of the control test supports the conclusion that Ms Jimenez and Ms Moreira were independent contractors.

### *The Integration Test*

[104] The “integration test” assesses the extent to which the applicants were respectively “part and parcel” of Renew’s organisation and is a critical component of the analysis of whether each was an employee or independent contractor.

[105] Both Ms Moreira and Ms Jimenez wore a uniform provided by renew. Each would have been regarded by clients as being part of the business and neither performed similar services for other companies.

[106] However, neither applicant was provided with any equipment, for the performance of their services such as phones or vehicles.

[107] Each was free to contract to other principals and pursue other interests or vocations. Any restriction on this freedom appears to have been self-imposed, rather than having been required by Renew.

[108] The extent to which Ms Moreira and Ms Jimenez were each integrated into Renew’s business would tend to show they were employed by it. However, in the overall circumstances, I regard such indication as a neutral factor in that it was merely consistent with the character of the services being provided, rather than a reflection of the true rights and obligations present in the relationship between the parties.

### *The fundamental or economic reality test*

[109] The “fundamental test” assesses whether the applicants were effectively working on their own account.

[110] Although the work done by Ms Moreira and Ms Jimenez could have been undertaken by employees, each presented with skills and abilities that the business did not develop or train them in. They did not have fixed hours, and to the extent hours were consistent it was because each of the applicants chose for this to be the case, rather than because it was a contractual requirement. This distinction is important because their working hours were governed by neither their agreement or Mr Risetto. Rather they were set by each applicant, pointing to their economic independence.

[111] Each applicant rendered invoices for work performed and the evidence does not demonstrate that this approach to their being paid for services was a front or shield for the fact they were truly employees. Each could have chosen to do fewer hours without penalty and then accounted for and paid their own tax.

[112] It is also relevant that Ms Jimenez was contracted to provide Lymphatic Massage and that she provided her own equipment for this. This fact shows that Ms Jimenez was presenting with the independence of a party that could provide a secondary service. The fact she ultimately did not perform this service without Renew being concerned about this fact also shows she had a degree of control over her own commercial destiny.

[113] I find when the facts are considered in their totality and the factors described above are taken into account, each applicant was effectively working on their own account.

#### *How other members of the Renew team were engaged*

[114] The fact that Ms Jimenez and Ms Moreira facilitated the engagement of others as independent contractors and explained to them in detail the implications of that arrangement is relevant.

[115] In particular it shows that the rights and obligations that each applicant explained to others were a reflection of the general practice at Renew. This was a practice that each applicant implemented and used to their advantage.

#### *Taxation*

[116] Deduction of PAYE (in the case of employees) or Withholding Tax (as is often utilised in the case of independent contractors) can be an indicator of how the parties viewed the relationship in practice.

[117] Both applicants managed their own tax obligations, including their income tax. This would have presented each with the opportunity to deduct costs incurred from their taxable income and would therefore have presented each with a taxation advantage.

[118] This factor, although far from determinative, weighs in favour of a finding each was an independent contractor.

## **Outcome**

[119] For the reasons set out above I find Ms Jimenez and Ms Moreira were independent contractors.

[120] Ms Jimenez and Ms Moreira's application for a finding they were employed by Renew is dismissed.

## **Costs**

[121] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[122] If they are not able to do so and an Authority determination on costs is needed Renew may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum Ms Jimenez and Ms Moreira would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[123] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate for matters considered on the papers of \$2,250.00 unless particular circumstances or factors required an upward or downward adjustment of that tariff.<sup>6</sup>

Matthew Piper  
Member of the Employment Relations Authority

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<sup>6</sup> See [www.era.govt.nz/determinations/awarding-costs-remedies](http://www.era.govt.nz/determinations/awarding-costs-remedies).