Sasha Borissenko: Is the Employment Relations Act fit for purpose?

Opinion by

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Many dancers at strip clubs have little bargaining power, says Aotearoa NZ Sex Workers' Collective founder and national co-ordinator Dame Catherine Healy. Photo / 123RF

OPINION:

Last week 19 women working for Wellington's Calendar Girls picketed outside the venue over their rights as independent contractors. Having formed the group Fired Up Stilettos, they are now seeking improved industry standards and independent contractor protection.

For context, 35 dancers decided to collectivise in January, asking management for clear income records and a 60 per cent cut of earnings. They were then told to "clear out their lockers" via a Facebook post.

In a petition, Fired Up Stilettos collected contracts from a number of venues and found dancers had to "pay exorbitant fines for not being at work at a time management decides, or leaving before management wants [them] to".

On top of receiving just 44 per cent of total earnings from tips and bookings, the contracts included fines compelling dancers to take underwear off at particular times to then remain naked while collecting tips. Fees also prohibited "rudeness" as determined by management toward management and customers.

Contracts also prohibited working at other venues, "allowing them to monopolise and control our labour", the petition read.

"These clauses create an atmosphere of dictatorial control by management over dancers that violates our status as independent contractors. We are willing to sacrifice labour security in order to have freedom – we will no longer tolerate having neither."

The group is calling for an official body that can vet strip club contracts and investigate complaints. Nowhere in the reporting has Worksafe come to the party, interestingly.

In a statement, Calendar Girls said the dancers were invited to reapply for positions, which was denied by the women.

If not for petitioning change to Parliament, legal recourse could be an option, but it's not the first time dancers have questioned their employment rights. Unfortunately, the Employment Act doesn't apply to independent contractors.

Clifford v Casino Bar

In 2018, two dancers raised a personal grievance against the Calendar Girls franchise (in this case, Christchurch) for unjustified dismissal. The Employment Relations Authority found the applicants were not employees and thus couldn't pursue personal grievances.

Having experienced attempted break-ins of their property and threats, the women missed a night's work. The proprietor made deductions from the women's pay, and they were either fired or not rostered on for following shifts. The women claimed they never received a contract but included a document outlining the club's policies.

Lingerie had to match, and clothes was to imply sexiness and sensuality, the policies document read. Dancers had

to give at least four hours' notice if unable to make a shift and to include a medical certificate.

Dancers were prohibited from working for other clubs and could incur a $2500 fine for doing so. A reward of $500 would be afforded to dancers who told the club of a breach. The same fine and reward would be incurred for dancers who gave their number to customers or went home with them.

Fines included: $50 for a missed stage spot; $100 for lateness; $75 for inappropriate dress; $500 for intoxication; $50 for hanging out in the changing room for long periods; $200 and 50 per cent tax on tips for rudeness to management or patrons; $100 for failing to wearing a g-string.

In his decision, Employment Relations Authority David Appleton said he acknowledged the nature of the business potentially created risks and lack of security for the dancers, and some had limited alternative options open to them. However, this could not be a driver for finding the applicants were employees.

The fining system was antithetical to an employment relationship, but it was commonly applied within the stripping industry at home and overseas, he said.

Essentially, the Employment Relations Act is geared towards favouring the underdog, but only if said underdog is within the confines of employee status.

On a broader scale, one has to question whether the current legal framework is fit for purpose seeing as people are increasingly turning to contracting for want of buying into the gig economy. And the gig economy will only increase as wages don't meet rising costs of living.

Supply, demand, and stigma

Aotearoa NZ Sex Workers' Collective founder and national co-ordinator Dame Catherine Healy told me dancers may be regarded as independent contractors but they're treated like overly-controlled employees.

In theory, dancers could question coercive contracts, but the balance was tipped in favour of clubs, she said. This is partly due to the size of the sector - which accounts for about 30 per cent of the sex industry - leaving dancers with few options.

"It's a fraught area with employers having callous disregard for people's rights. With limited options it means there's a reluctance to stand up for people's rights for fear of not getting any work."

The Prostitution Reform Act 2003 saw the decriminalisation of commercial sex activities and strengthened working environments. But dubious contracts and supply and demand was such that many dancers have little bargaining power, she said.

"Then there's the stigma associated with the industry - which is palpable at times. It's improved since the reforms but you hear it and feel it. These courageous women have stood up but notice they haven't used their names so that tells you a lot about the stigma.

"This situation is just the tip of the iceberg, while these women aren't being trafficked, systems like these are a forerunner to more serious consequences."