

Child-care case rejected ^[1]

Author: Paul, Gordon

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EXCERPTS

A case in Kitchener small claims court that could have had big financial implications for regional government was rejected on Thursday.

Norma Jimenez, a former home child-care provider with the Region of Waterloo, sued the region, claiming she should have been considered a region employee not an independent contractor.

Jimenez, who argued she deserved to be paid minimum wage, was seeking retroactive pay of \$25,000, the maximum amount allowed in small claims court. But the claim was rejected.

As a home child-care provider, she made about \$5 an hour, less than half the minimum wage, according to Shaun Harvey, a paralegal representing her.

Richard Brookes, a lawyer representing the region, said in court on Thursday that although it's a small claims court trial, the ruling could have set a "significant precedent," considering the region uses 450 home child-care providers.

"The region exerts enough control over its child-care providers that she constitutes an employee of the region for the purpose of making a minimum wage claim," Harvey said in an interview.

Home child-care providers are not paid an hourly wage; they get paid for blocks of time. The amount they get depends on the number of children and their ages. In 2014, Jimenez cared for a baby and an older child.

The workers have always been considered independent contractors. They work out of their homes and have flexibility with their hours and the number of children they care for.

They also make some independent decisions, Brookes said.

The lawyer asked Jimenez if it was her decision whether to care for a certain child.

"That's correct," she said.

Jimenez also agreed that if she wanted to make more money, she could have cared for five children — through the region and privately — simultaneously.

She also acknowledged that the contract she signed with the region specified she was an independent contractor.

Brookes noted the region does not deduct income tax, employment insurance or Canada Pension Plan from home child-care providers' pay nor provide them with vacation pay or sick pay.

But Harvey maintained Jimenez "meets the test" of an employee.

"The bottom line is she has no control over what happens to her, she's being dictated to by a large organization."

Harvey noted most home child-care providers are women.

"We're framing this as a step of equality and equal rights — the idea that women are being systemically discriminated against," he said.

"We're not outright accusing the region of systemic discrimination here," Harvey added. "I don't think anyone intends it to happen. I think it's just a function of the way the system operates. I don't think there's any malice here. I think it's just a simple matter of a misunderstood concept."

-reprinted from The Record

Region: Ontario ^[3]

Tags: regulated family child care ^[4]

home-based ^[5]

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