



INDEPENDENT CONTRACTOR OR EMPLOYEE?

What is an Independent Contractor?

An independent contractor works under a contract for a specific job or for a specified length of time. A good example is a plumber – s/he is engaged to fix a leak, provides their own tools and equipment, quotes a price and completes the job.

Unlike an employee, an independent contractor generally doesn't work specifically for one employer, and can choose whether or not to do a particular job.

There are a number of tests to determine whether an individual is an employee or an independent contractor, however in each case the answer is determined by examining all of the facts; there is no set answer.

The following are *some examples* of the issues considered in determining whether an individual is an employee or an independent contractor:

Matters indicative of an Employee/Employer relationship

An employee:

- Performs work, under the direction and control of their employer, on an ongoing basis.
- Generally works standard or set hours (unless casual) and is generally paid an hourly rate or annualised salary.
- Contributes no financial outlay or financial risk
- Is subject to awards or minimum terms and conditions and other workplace legislation determining rates of pay etc.
- Is paid superannuation by the employer.
- Has income tax deducted by their employer.
- Is paid regularly (eg. weekly or fortnightly).
- Is entitled to get paid leave such as annual leave, personal / carer's leave (if they are a permanent employee).

Matters indicative of an Independent contractor relationship

An Independent contractor ordinarily:

- Has control of the performance of the work and how it is to be done – subject to meeting the end requirements
- Bears the risk for making a profit or loss on each job and factors all costs into the 'quote' or price
- Pay their own superannuation and tax, including GST
- Have their own insurances – eg. professional indemnity or personal liability
- Are contracted to work for a set task or period of time
- Submit an invoice for work completed or are paid at the end of the contract or project
- Do not get paid leave
- May employ other people to perform the work
- Perform the work for various 'principals'

Why is it important for employers to know the difference?

If an individual is engaged as an employee, and a court determines the relationship is actually an independent contracting relationship the employer may be found to have entered a 'sham contracting arrangement'.

A **sham contracting arrangement** is where an employer tries to disguise an employment relationship as an independent contracting relationship. Penalties apply in these circumstances.

Penalties

A court may order the employer to pay a penalty of up to \$33,000 per contravention.

Additionally, the employer may be liable to backpay claims for pay, particularly overtime, shift and weekend penalties in addition to leave entitlements if a contracting arrangement is deemed a 'sham'.

What should employers do to avoid liability?

Review all contracting arrangements and contact IR Assist for advice where uncertain of your arrangements.



IndigoField

Industrial Relations

If you have any questions regarding this fact sheet or would like assistance regarding IR/HR/OHS contact IR Assist for more information:

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