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Employee or contractor

The difference between an employee and a contractor

A key factor in deciding if a worker is an employee is the degree of control that can be exercised over the worker. If the payer has the right to direct the specific details of how, when, where and who is to perform the work, it is likely that the worker is an employee. These directions may be in writing, verbal or simply understood between the parties.

Another key factor to consider is if the worker is being paid for the time worked (eg by the hour) rather than for a result. As a general rule, contractors are established in their own businesses and supply materials, plant and equipment to complete work for an all-inclusive price to achieve a result for their customer or client. On the other hand, employees are engaged to work on a labour-only basis, usually on an hourly rate and at the direction of their employer.

Award wages, PAYG (withholding taxes), compulsory superannuation and workers' compensation (Workcover) are all paid *in-house* for employees while contractors are responsible for many of their own payments and are paid in much the same way as suppliers. As a small business operator you are responsible for complying with legislation relating to your employees. Payments to contractors may vary under the New Tax System, you should refer to your tax agent or the Australian Tax Office www.ato.gov.au for advice.

There are certain rules for compulsory superannuation, workers' compensation (WorkCover) and taxation which may cut across these simple distinctions. No one factor is necessarily conclusive. It depends on the facts in each case.

How do I know if workers are employees or contractors?

An employee:

- Is paid for the amount of time worked
- Receives paid leave (eg sick, recreation, long service)
- Is not responsible for providing materials or equipment required to do their job
- Must perform the duties of his/her position to meet the employer's specific instructions
- Agrees to provide his/her personal services
- Works hours set by an agreement or award
- Is recognised as a part of the business
- Takes no commercial risks and cannot make a profit or loss from the work performed

A contractor:

- Is paid for results achieved
- Provides all or most of the materials and equipment needed to complete the work
- Is able to delegate work to other people, businesses and contractors
- Has freedom in the way the work is done
- Provides services to the general public and other businesses
- Is free to accept or refuse work
- Is in a position to make a profit or suffer a loss



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	Employee	Contractor
Control over work	Skilled employees may have a high level of independence in the way they work, although the framework within which they work would be set out with or by the employer.	Typically a contractor has a higher level of independence in the way the work is performed, within the limits of the contract for the work.
Independence	Employees have a duty to perform work for the employer as directed or in accordance with an employment contract.	The contractor must perform duties in accordance with the contract, but not necessarily in other roles except by agreement.
Payment	Often based on the period of time worked, but can also work on “piece rates” or commission.	Typically, payment is according to results without regard to the time taken.
Legal liabilities	The employer, not the employee, is legally liable for the work.	The contractor is legally liable for the work performed under the contract.
Commercial risks	The employee generally bears no risks in respect of the work and is not liable to remedy any defective work at their own expenses	The contractor bears the risks, has the potential to make a profit or loss and is responsible to remedy any defective work at their own expense.
Integration in business	The employee works as part of the employer’s business	The contractor works as part of their own business and may be associated with the operations of another business.
Ability to delegate	The employee performs the work personally and cannot delegate the work.	Typically, a contractor has the ability to delegate the work by agreement or otherwise.
Tools and equipment	Ordinarily provided by the employer, except when specifically agreed otherwise.	The contractor provides their own tools and equipment.

What is the right way to go for my business?

In today’s competitive business climate, with more businesses and households outsourcing services and contracting work projects, contracting will continue to grow.

For many small business operators, many who are contractors themselves, the option to hire contractors rather than employees is not always available. If you engage a person solely for the supply of their own labour, they are generally considered employees rather than contractors. Even commissioned sales people who are on an irregular pay basis are usually considered employees.

If you engage staff as contractors rather than employees, or convert employees to contractors, you may be acting illegally and be liable for significant penalties for tax evasion, non-payment of compulsory superannuation and workers’ compensation avoidance. This may even extend to a civil liability claim if a worker is injured on the job and their employer does not have workers’ compensation insurance (WorkCover).



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Who can help?

To safeguard your business from these kinds of penalties and claims, you should seek professional advice from your solicitor and/ or accountant and check with the Australian Taxation Office and WorkCover Queensland.

- Australian Taxation Office: telephone 13 28 66 or www.ato.gov.au
- WorkCover Queensland: telephone 1300 362 128 or www.workcover.qld.gov.au
- Department of Employment and Industrial Relations Wageline: telephone 1300 369 945 or www.wageline.qld.gov.au – Information about awards, pay rates and employee entitlements, employee hiring/terminations

In some cases, the Australian Taxation Office and the WorkCover Queensland have different definitions for employees and contractors. To make sure, consult with your solicitor before hiring people as contractors or changing the status of your employees to contractors.

Your local State Development Centre can provide you with general information on employment issues or refer you to the most appropriate source of specialist advice.

Further information

The following fact sheets provide further information on these issues:

- Employees