

Independent Contractors

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What is the difference between an employee and independent contractor?

There are many factors which contribute to determining what makes an employee and an independent contractor. Each arrangement will turn on its own facts, balancing the various factors against each other to determine whether an individual is engaged as an independent contractor or an employee.

Indicator	Employee	Independent contractor
Degree of control over how work is performed	Performs work under the direction and control of their employer on an ongoing basis.	Has a high level of control in how the work is done.
Hours of work	Generally works standard or set hours (note: a casual employee's hours may vary from week to week).	An independent contractor decides what hours to work to complete the specific task.
Expectation of work	Usually has an ongoing expectation of work (note: some employees may be engaged for a specific task or specific period).	Usually engaged for a specific project or task.
Risk	Bears no financial risk (this is the responsibility of their employer).	Bears the risk for making a profit or loss on each task. Usually bears responsibility and liability for poor work or injury sustained while performing the task. As such, contractors generally have their own insurance policy.
Superannuation	Entitled to have superannuation contributions paid into a nominated superannuation fund by their employer.	Pays their own superannuation (note: in some circumstances independent contractors may be entitled to be paid superannuation contributions).
Tax	Has income tax deducted by their employer.	Pays their own tax and GST to the Australian Taxation Office.
Tools and equipment	Tools and equipment are generally provided by the employer or a tool allowance is provided.	Uses their own tools and equipment (note: alternative arrangements may be made within a contract for services).
Method of payment	Paid regularly (for example, weekly/fortnightly/monthly).	Submits an invoice for work completed or is paid at the end of the contract or project.
Leave	Entitled to receive paid leave (for example, annual leave, personal/carers' leave, long service leave) or receive a loading in lieu of leave entitlements in the case of casual employees.	Does not receive paid leave.

Sham contracting arrangements

A sham contracting arrangement occurs where an employer attempts to disguise an employment relationship as an independent contractor arrangement. The most common reason for doing this is to avoid paying employee entitlements.

Under the sham contracting provisions of the Fair Work Act 2009 (**FW Act**), an employer cannot:

- misrepresent an employment relationship or a proposed employment arrangement as an independent contracting arrangement
- dismiss or threaten to dismiss an employee for the purpose of engaging them as an independent contractor or
- make a knowingly false statement to persuade or influence an employee to become an independent contractor.

The FW Act provides serious penalties for contraventions of these provisions. The courts may impose a maximum penalty per contravention. The amounts of the penalties can be found [here](#).

Payroll tax and workers compensation

You may still be liable for payroll tax in relation to independent contractors. Payroll tax is a state based tax. Therefore, please contact your state/territory revenue office or your accountant for further information.

Many people working as contractors are still treated as workers for the purposes of workers compensation and you may still be liable for and required to hold workers compensation insurance in relation to independent contractors. Again, each state has different legislation on who is a worker for the purposes of workers compensation. Please contact your state workers compensation body for further guidance.