



Employee or contractor

You need to check if your worker is an employee or contractor as it affects your tax, super and other obligations.

How to work it out: employee or contractor >

To check if your worker is an employee or contractor, you need to review the whole working arrangement.

Difference between employees and contractors >

Employees work in and are part of your business. Contractors are running their own business.

Employees treated as contractors >

Penalties and charges if you incorrectly treat an employee as a contractor plus how to make a tip-off about a business.

Your tax and super obligations >

Your tax, super and other government obligations vary depending on whether your worker is an employee or contractor.

Myths and facts >

Common myths can cause many businesses to get it wrong when working out whether a worker is an employee or contractor.

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How to work it out: employee or contractor

To check if your worker is an employee or contractor, you need to review the whole working arrangement.

16 December 2022

On 9 February 2022, the High Court handed down decisions in CFMMEU v Personnel Contracting [2022] HCA 1 and ZG Operations v Jamsek [2022] HCA 2, which impact ATO advice and guidance in relation to classifying workers.

We are currently considering these decisions and the impact they will have in relation to the worker classification risk, and we have published a **decision impact statement**.

Draft public advice and guidance products were published for consultation on the ATO legal database on 15 December 2022, with the consultation period open until 16 February 2023.

Information to help you determine whether your worker is an employee or contractor is available at **employee or contractor**.

To check if your worker is an employee or contractor, you need to review the whole working arrangement.

Classifying your worker

The High Court judgments clarify that the totality of the relationship between a worker and an employer consists of the legal rights and obligations arising from the contract between the parties.

You are responsible for classifying your worker for tax and super purposes and you need to get it right. If you make an incorrect decision, you may face penalties.

If you are engaging a worker who you believe is a contractor, you can choose to pay them super to ensure you are not liable for the superannuation guarantee charge (SGC). You will need to pay any super contributions directly to their chosen superannuation fund and should include this in your contract with the worker.

Superannuation obligations still may apply to certain contractors

In certain circumstances you must pay superannuation for contractors who are deemed to be employees for superannuation purposes.

These circumstances include the following.

- If the worker works under a contract that is wholly or principally for their labour.
- If the worker performs work that is wholly or principally of a domestic nature for more than 30 hours per week.
- A sportsperson, artist or entertainer paid to perform, present or participate in any music, play, dance, entertainment, sport, display or promotional activity, or similar activity.
- A person paid to provide services in connection with any performance, presentation or participation in these activities.
- A person paid to perform services related to the making of a film, tape, disc, television or radio broadcast.

Some workers are always employees

The following workers are **always** treated as employees:

- apprentices
- trainees
- labourers
- trades assistants.

Apprentices and trainees do both work and recognised training to get a qualification, certificate or diploma. They can be full-time, part-time or school-based and usually have a formal training agreement with the

business they work for. This is registered through a state or territory training authority or completed under a relevant law.

In most cases they are paid under an award and receive specific pay and conditions. You must meet the same tax and super obligations as you do for any other employees.

Companies, trusts and partnerships are always contractors

An employee must be a person. If you've hired a company, trust or partnership to do the work, this is a contracting relationship for tax and super purposes. The people who do the work may be directors, partners or employees of the contractor but they're not your employees.

Labour hire or on-hire arrangements

If you hired your worker through a labour hire or on-hire firm and pay that firm for the work undertaken in your business, your business has a contract with the labour hire firm. They are responsible for pay as you go (PAYG) withholding, super and fringe benefits tax obligations. Labour hire firms may be called different names, including recruitment services or group training organisations. They will refer to your business as the 'host employer'.

Hiring individuals

If you've hired an individual, the details within the working agreement or contract determine if they are a contractor or employee for tax and super purposes. The agreement or contract can be written or verbal.

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Difference between employees and contractors

Employees work in and are part of your business.
Contractors are running their own business.

16 December 2022

High court decision affecting advice and guidance

On 9 February 2022, the High Court handed down decisions in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2, which impact ATO advice and guidance in relation to classifying workers.

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To work out if your worker is an employee or contractor, you need to determine whether your worker is serving in your business or is running their own business. You do this by reviewing the legal rights and obligations in the contract you entered into with your worker.

Contracts are usually written, but there may also be oral contracts or a hybrid. Your contract may also be varied based on your or your worker's conduct. Any label which you and the worker use in your contract to describe your relationship (such as 'independent contractor') will not determine or be relevant to how your relationship is characterised.

Serving in your business

The critical differences between an employee and independent contractor are:

- an employee serves in your business, and performs their work as a representative of your business

- an independent contractor provides services to your business and performs work to further their own business.

It is crucial that you accurately characterise the nature of the business that you carry out. You should examine the essential activities of the business that you operate and compare them with the legal rights and obligations contained in the contract you entered into with the worker.

Although the old multifactorial test is no longer used, the same indicia are still relevant in considering whether the worker is working in your business, taking into account only the legal rights and obligations between you and your worker.

Employee or contractor

The table below outlines each indicia and some features that may points towards or against a finding of employment. No single indicia is definitive and they should not be applied as if they are a checklist.

Common indicia

Analysis of the indicia must be done by reference only to the legal rights and obligations that arise from the contract you enter into with your worker.

Employee	Contractor
Control: your business has the legal right to control how, where and when the worker does their work.	Control: the worker can choose how, where and when their work is done, subject to reasonable direction by you.
Integration: the worker serves in your business. They are contractually required to perform work as a representative of your business.	Integration: the worker provides services to your business. The worker performs work to further their own business. They may choose to present themselves as part of your business.
Mode of remuneration: the worker is paid either:	Mode of remuneration: the worker is contracted to achieve a specific result, and

<ul style="list-style-type: none"> • for the time worked • a price per item or activity • a commission. 	<p>is paid when they have completed that result, often for a fixed fee.</p>
<p>Ability to subcontract or delegate: the worker must perform the work themselves and cannot pay someone else to do the work for them.</p>	<p>Ability to subcontract or delegate: the worker is free to delegate to others who the worker will pay to complete the work on their behalf.</p>
<p>Provision of tools and equipment: your business provides all or most of the equipment, tools and other assets required to complete the work, or the worker provides all or most of the tools, but your business provides them with an allowance or reimburses them for expenses incurred.</p>	<p>Provision of tools and equipment: the worker provides all or most of the equipment, tools and other assets required to complete the work, and you do not give them an allowance or reimbursement for the expenses incurred.</p> <p>The work involves the use of a substantial item that your worker is wholly responsible for.</p>
<p>Risk: the worker bears little or no risk. Your business bears the commercial risk for any costs arising out of injury or defect in their work.</p>	<p>Risk: the worker bears the commercial risk for any costs arising out of injury or defect in their work.</p>
<p>Generation of goodwill: your business benefits from any goodwill arising from the work of the worker.</p>	<p>Generation of goodwill: the worker's business benefits from any goodwill generated from their work, not your business.</p>

Authorised by the Australian Government, Canberra.

Superannuation for certain contractors

In certain circumstances you must pay superannuation for contractors who are deemed to be employees for superannuation purposes. These circumstances include the following.

- If the worker works under a contract that is wholly or principally for their labour.
- A sportsperson, artist or entertainer paid to perform, present or participate in any music, play, dance, entertainment, sport, display or promotional activity, or similar activity.
- A person paid to provide services in connection with any performance, presentation or participation in these activities.
- A person paid to perform services related to the making of a film, tape, disc, television or radio broadcast.

Ability to subcontract-delegate



Consider whether a worker's agreement allows them to pay another person to do the work for them.

Basis of payment



When working out if a worker is an employee or contractor, you must consider how you agreed to work out their pay.

Equipment, tools and other assets



When working out if a worker is an employee or contractor, you must consider who provides the tools needed for the work.

Commercial risks



To determine if a worker is an employee or contractor, consider whether they bear the risk for rectifying work defects.

Control over work



When working out if a worker is an employee or contractor, you must consider who controls the way the work is done.

Independence



To determine if a worker is an employee or contractor, consider their integration within your business.

Industry examples



Examples of the differences between employees and contractors in various industries.

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Worker's ability to subcontract or delegate

Consider whether a worker's agreement allows them to pay another person to do the work for them.

16 December 2022

Worker can't subcontract or delegate work

This is a characteristic of an employee.

A worker can't subcontract or delegate the work if:

- the contract requires them to personally do the work
- the worker can't do the work themselves and they organise for another person to do it, but your business pays the other person – this is substitution, not delegation.

Example: a worker can't subcontract or delegate work

A commercial cleaning business has a contract to clean a number of small offices. The business has several cleaners who do the cleaning work, including Ann and Ben.

Ann can't do her shift and her contract does not allow her to pay someone else to do the work, so she organises Ben to cover for her. The business pays Ben for his extra cleaning shift.

As Ann only organised for Ben to complete her shift and did not pay him, she has **not** subcontracted or delegated the work.

Worker can subcontract or delegate work

Subcontracting or delegating work is a characteristic of a contractor.

A worker can subcontract or delegate the work if they are not contractually required to do the work personally and can pay another person to do the work.

Example: a worker can subcontract or delegate work

A remedial massage therapist, Con, has a contract with an aged care facility to provide massage therapy to residents.

The written agreement between Con and the aged care facility specifies:

- Con does not need to personally do the work
- any suitably qualified massage therapist who has a current police clearance and the appropriate insurance can do the work.

Con is unwell and can't work for a week, so:

- Con organises for another therapist (who runs a massage business) to cover his work
- the aged care facility still pays Con as outlined in the contracted agreement
- Con pays the other therapist for their work.

As Con was not contractually required to do the work personally and could pay another person to do the work, he **has** delegated the work.

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Basis of payment

When working out if a worker is an employee or contractor, you must consider how you agreed to work out their pay.

6 January 2017

When working out whether a worker is an employee or contractor, one factor to consider is how you work out what you agree to pay the worker. This is called basis of payment.

Set amount per period

This is a characteristic of an employee.

You pay your worker a set amount per period if they're paid:

- a set amount such as an award rate, annual salary or an hourly or weekly rate (which is paid regularly, for example weekly or monthly)
- for the time they work.

Example

A supermarket trolley collection business provides trolley collection services for several small supermarkets in the local area. The business has several trolley collectors who collect the trolleys and return them to the respective supermarkets.

The trolley collectors are paid:

- an hourly rate (which is paid weekly)
- for the rostered shifts they work each week.

The trolley collectors are paid on a 'set amount per period' basis as they're paid a regular, set amount for the time they work.

Price per item or activity

This is a characteristic of an employee.

Price per item or activity can also be called 'piece' or 'piece-work' rates.

You pay your worker a price per item or activity if they're paid:

- a specific amount for each item or activity they produce (for example, number of research interviews conducted, quantity of fruit picked or amount of sales successfully completed)
- for the number of items or activities they produce during a defined time period (for example, daily, weekly or monthly).

Being paid on a commission basis is considered a price per item or activity.

Example

A business has a team of telemarketers who sell their products and services. The telemarketers are paid:

- a specific amount per successful sale they make
- for the number of successful sales they produce during their rostered shifts each week.

The telemarketers are paid on a 'price per item or activity' basis as they are paid a specific amount for each item they produce and for the number of items they produce during a defined time period.

Quoted price for an agreed or pre-determined result

This is a characteristic of a contractor.

You pay your worker a quoted price for an agreed or pre-determined result if all the following apply:

- the basis of the worker's job is to complete a specific task or project
- the worker provides a quote for the specific task or project (a component of the quoted amount could be worked out on the basis of the time taken to complete the task or project)

- you pay the worker the quoted amount only when they complete the agreed or pre-determined result of that task or project – that is, the achievement of the result is what entitles the worker to be paid.

Sometimes progress payments may be paid once the worker has satisfactorily completed specific stages of the task or project. It is worth noting that a quote can be *calculated* different ways, including cost per hour or price per item, but the worker is not paid until the **agreed result is achieved**.

Example

A retail business needs to have the windows of their commercial premises cleaned on a monthly basis. A window cleaner, Dana, provides a quote for the job. Based on this quote the retail business enters into a contract with Dana to complete the work.

Each month Dana cleans the windows and submits an invoice to the retail business.

If the windows are cleaned to the required standard, the retail business will then pay Dana the amount she quoted. It doesn't matter whether it takes Dana one hour or four hours to complete the work to the required standard; she'll only be paid the amount she quoted.

Dana is paid for a quoted price for an agreed or pre-determined result as all of the following apply:

- the basis of her job is to complete a specific task (cleaning the retail business's windows)
- she provided a quote to clean the windows
- the retail business paid Dana the quoted amount when she finished cleaning the windows to the required standard.

Next step:

- Equipment, tools and other assets

Equipment, tools and other assets

When working out if a worker is an employee or contractor, you must consider who provides the tools needed for the work.

6 January 2017

When working out whether a worker is an employee or contractor, one factor to consider is whether your business or the worker is responsible for providing the equipment, tools and other assets (such as heavy machinery or motor vehicles) needed to do the work.

When considering this factor you don't include any:

- equipment, tools and other assets that are of incidental use and therefore not strictly needed to do the work (for example, a hammer used by a real estate agent to put up a 'for sale' sign)
- motor vehicles that are exclusively used for travelling to and from work.

Your business is responsible for providing the equipment, tools and other assets

This is a characteristic of an employee.

Your business is responsible for providing the equipment, tools and other assets if either your:

- business provides all or most of the equipment, tools and other assets needed to do the work
- worker provides all or most of the equipment, tools and other assets needed to do the work, but your business provides the worker with an allowance or reimburses them for the cost of the equipment, tools and other assets.

Example

Henry works at a golf club as a greenkeeper. He's responsible for the upkeep of the golf course greens, tees, fairways, rough and surrounds, and general landscaping maintenance.

Henry brings along a few inexpensive hand tools of his own which he prefers using. The golf club provides all the other equipment, tools and assets to complete the work, including:

- greens mower
- tractor
- slasher
- spreader
- line trimmer.

Although Henry provides some tools, the golf club is considered responsible for providing the equipment, tools or other assets as they provide the majority of the equipment, tools and assets needed to do the work.

Worker is responsible for providing the equipment, tools and other assets

This is a characteristic of a contractor.

The worker is considered responsible for providing the equipment, tools and other assets if they:

- provide all or most of the equipment, tools and other assets needed to do the work
- don't receive an allowance or reimbursement for the cost of the equipment, tools and other assets.

Example

Jeff is a garden maintenance worker who has a contract with a business to maintain their lawns and gardens on a fortnightly basis.

Jeff provides all his own equipment and tools to complete the job including a lawnmower, line trimmer, blower vac, hedge trimmer and garden hand tools. He also has his own vehicle and trailer to transport the equipment and tools to the business's premises.

Each fortnight while the lawns and gardens are maintained to the agreed standard, the business pays Jeff the amount specified in the contract (they don't provide any other payments to Jeff).

Jeff is responsible for providing the equipment, tools and other assets as he:

- has provided all his own equipment, tools and vehicle to complete the job
- doesn't receive an allowance or reimbursement from the business.

Next step:

- Commercial risks

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Difference between employees and contractors – bearing risk

To determine if a worker is an employee or contractor, consider whether they bear the risk for rectifying work defects.

16 December 2022

Workers don't bear risks

This is a characteristic of an employee.

The worker does not bear the legal risk if your business:

- is responsible for defects in the work done by the worker
- has to rectify any defect or pay to have the defect rectified.

If your worker rectifies a defect in their work, but your business pays the worker for the time taken and any materials required to rectify this defect, the worker is not considered to have borne a risk.

Example: business is liable for damages

A commercial cleaning business has a contract to clean a number of small offices. The business hires several cleaners who do the cleaning work.

One of the cleaners, Brayden, accidentally spills bleach on the foyer carpet in one of the buildings. He attempts to minimise the damage, but the carpet is ruined.

Under the contract, the business is liable for the damage and has to pay for the carpet to be replaced. While Brayden receives a reprimand from the business, he is not required to pay for the damage he caused.

Brayden does not bear the risk as he is not responsible for his work and the business has to pay to have the defect in the work rectified.

Workers bear risks

This is a characteristic of a contractor.

The worker bears the legal risk if:

- the worker is legally responsible for defects in their work
- the worker has to rectify any defect (including incurring the cost of any materials required) or pay to have the defect rectified
- your business does not have to pay the worker for the time taken or any materials required to rectify any defect.

Example: contractor is liable for damages

Robert is a pest control technician. He contracts his services to an architect business to carry out an annual pest spray. Robert completes the pest spray, treating cockroaches, spiders, fleas, ants and silverfish, and guarantees the pests will not return for 12 months.

Two months after the pest spray was completed, some of the business's employees complain about finding cockroaches in the staff lunchroom.

As Robert guaranteed the work, the business contacts Robert and asks him to fix the problem. The business is not required to pay Robert to come back and respray the area to eradicate the cockroaches.

Robert bears risks as he is legally responsible for rectifying his work and that rectification is at his own expense.

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Control over work

When working out if a worker is an employee or contractor, you must consider who controls the way the work is done.

6 January 2017

To work out if a worker is an employee or contractor, one factor to consider is whether your business, or the worker, controls the way the work is done.

Your business controls the way the work is done

This is a characteristic of an employee.

Your business controls the way the work is done if your business has the right to direct:

- what work the worker does
- where the work is done
- how the worker carries out the work
- when the worker completes the work, for example, your business sets the worker's hours.

Example

A telecommunication business hires a worker to answer inbound calls in their call centre.

The business has a computer system that automatically routes phone calls to call centre workers based on their knowledge skill set. The call centre worker must answer each phone call according to the business's procedures and scripting.

The call centre worker has five shifts each week, which the business rosters.

The business controls the way the work is done as they direct what, where, how and when the work is done.

Worker can decide the way the work is done

This is a characteristic of a contractor.

The worker can decide the way the work is done if they are free to exercise their discretion in completing the work (subject to the terms and conditions in any contract or agreement).

A business has the right to specify how the contracted services are to be done. However, such control must be specified in the terms and conditions of the contract or agreement; otherwise the worker is free to exercise their own discretion.

Example

A large domestic house builder uses several stylists who create personalised interior solutions for their display homes.

Each stylist is assigned a job to fully fit out and decorate one display home. They liaise with the architect to understand the styling and furnishing needs specific to the intended purchasers of that house. The stylist creates the design and can choose their own suppliers.

The stylists determine how best to complete each job within the agreed budget and timeframe the builder has specified. Each

stylist can decide the way the work is done as they are free to exercise their discretion in completing the work.

Next step:

- Independence

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Difference between employees and contractors – integration within your business

To determine if a worker is an employee or contractor, consider their integration within your business.

16 December 2022

Worker represents or performs work for your business

This is a characteristic of an employee.

The worker serves in your business. They are contractually required to perform work as a representative of your business.

Example: worker serving in your business

A hotel has room attendants to clean and vacuum as well as deal with housekeeping requests.

The room attendants:

- are required to wear a uniform with the hotel's logo and a name badge
- were provided with training by the hotel in how their duties needed to be carried out to meet the hotel's standards

- work specific hours and as part of a team to ensure the rooms are made up before the hotel's check-in time
- need to do any duties reasonably asked of them (within their job description) by the hotel.

The room attendants are not operating independently of the hotel as they work within and are part of the hotel. That is, the hotel is the single business being operated.

Worker has their own business that provides services to you

This is a characteristic of a contractor.

The worker is operating independently of your business if they perform work to further their own business.

The worker performs services as specified in their contract or agreement and is free to accept or refuse additional work.

Example: worker operating independently of your business

A hotel offers a range of services to its guests, including in-room massage. The hotel enters into an agreement with a massage therapist to perform the massages for their guests.

If a guest requests a massage, the massage therapist uses their own equipment to provide the massage in the guest's room.

The client may either pay the massage therapist directly or add the cost to their room account, in which case, the hotel takes out a service fee before passing on the net amount to the massage therapist.

The hotel vetted the massage therapist before allowing them to conduct their business on their premises. As specified in their agreement, the hotel takes no responsibility for any negative outcome for the guest or massage therapist.

The massage therapist does massages at other hotels and can also visit clients in their own homes. They are free to refuse work the hotel offers.

The massage therapist provides their own business cards to the clients, and tells clients that they can book future massages directly with the massage therapist when they are not staying at the hotel.

The massage therapist is operating independently of the hotel as the massage therapist:

- is performing work to further their own business, independently of the hotel
- performs services as specified in their agreement and is free to accept or refuse additional work.

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Industry examples

Examples of the differences between employees and contractors in various industries.

6 January 2017

These examples show the differences between employees and contractors in various industries:

- [Domestic painting](#)
- [Road transport](#)
- [Cleaning](#)
- [Information technology](#)
- [Building and construction](#)

Domestic painting

This example shows the differences between an employee and contractor in domestic painting.

Clarissa is an employee	Vince is a contractor
<p>A domestic painter, Clarissa, works for a painting business on an ongoing basis. The business has told Clarissa she will be painting the interior of home units at a local retirement village for the next four weeks.</p>	<p>A domestic painter, Vince, has been engaged by a local retirement village to paint the interior of some of their home units.</p>
<p>Control over the work Clarissa is required to be at the retirement village from 8.00am – 4.00pm, Monday to Friday. Each morning the business instructs her about what work she will carry out that day.</p> <p>Employee characteristic – the painting business has control over the work.</p>	<p>Control over the work Based on their agreement, Vince is responsible for preparing, priming and painting all interior walls of the specified home units in the colour the retirement village has requested. The retirement village requires Vince to complete the work during 5 January to 4 February between 7.30am and 5.00pm to limit disruptions, but Vince can choose how the work is undertaken.</p> <p>Contractor characteristic – Vince has freedom in the way the work is done, subject to the specific terms in the agreement.</p>
<p>Ability to subcontract/delegate Clarissa has been hired by the business to do painting work and needs to personally perform the work requested of her.</p> <p>Employee characteristic – Clarissa cannot subcontract/delegate the work.</p>	<p>Ability to subcontract/delegate Vince does not need to complete the work himself. He has an apprentice who will help in completing the work on the retirement village. Vince pays the apprentice weekly for the hours he works.</p> <p>Contractor characteristic – Vince can subcontract/delegate the work.</p>

<p>Basis of payment Clarissa is paid an hourly rate for the time she works each week.</p> <p>Employee characteristic – Clarissa is paid for the time worked.</p>	<p>Basis of payment Vince will be paid the amount he quoted to paint the interior of the home units once the work is completed to the required standards and timeframe.</p> <p>Contractor characteristic – Vince is paid for a specific result based on the quote he provided.</p>
<p>Equipment, tools and other assets Clarissa uses the painting business's tools, equipment and materials.</p> <p>She drives her own ute to and from the worksite each day. The painting business requires Clarissa to have her own transport.</p> <p>Employee characteristic – the painting business provides the equipment, tools and assets required to complete the work. The ute is not being used to perform the work.</p>	<p>Equipment, tools and other assets As specified in the agreement, Vince is required to provide the tools, equipment and materials required to complete the job.</p> <p>Contractor characteristic – Vince provides the equipment, tools and assets required to complete the work.</p>
<p>Commercial risks If Clarissa does a substandard job, the painting business is responsible for the work completed. The business will tell Clarissa to fix the problem, but she will:</p> <ul style="list-style-type: none"> do the work during her standard working hours and the painting business will pay her for those hours use the painting business's equipment, tools and materials to rectify the poor workmanship. <p>Employee characteristic – Clarissa takes no commercial</p>	<p>Commercial risks If the standard of work does not meet the required standards, Vince will need to rectify the poor workmanship at his own cost.</p> <p>Contractor characteristic – Vince takes commercial risks.</p>

risks.	
<p>Independence Clarissa works on an ongoing basis for the painting business and must do any painting work they request.</p> <p>Employee characteristic – Clarissa is not operating independently of the painting business.</p>	<p>Independence Vince regularly advertises his services and has several painting jobs booked in after the work at the retirement village is completed. If the retirement village needs further work done, he can choose whether he completes the work (depending on what other jobs are booked at the time).</p> <p>Contractor characteristic – Vince is operating his own business independently of the retirement village.</p>

Road transport

This example shows the differences between an employee and contractor in the road transport industry.

Ralph is an employee	Toni is a contractor
A truck driver, Ralph, works for a food manufacturing business and transports their products long distances to retail outlets across Australia.	A truck driver, Toni, who leases a refrigerated truck, enters into a contract with a local seafood business to transport their products during the busy Christmas period.
<p>Control over the work The food manufacturing business requires Ralph to:</p> <ul style="list-style-type: none"> make deliveries according to their monthly schedule and procedures complete and submit a logbook documenting his driving hours and kilometres. 	<p>Control over the work The seafood business's products must be delivered for the period 1 November to 24 December in a specified delivery region.</p> <p>Provided the deliveries are made on the required day, Toni can determine how and in what order the deliveries are made.</p>

<p>Employee characteristic – the food manufacturing business has control over the work.</p>	<p>Contractor characteristic – Toni has freedom in the way the work is done, subject to the terms in the contract.</p>
<p>Ability to subcontract/delegate</p> <p>Ralph is required to undertake the deliveries himself. If Ralph is unavailable, he needs to let the food manufacturing business know so they can organise and pay a replacement truck driver.</p> <p>Employee characteristic – Ralph cannot subcontract/delegate the work.</p>	<p>Ability to subcontract/delegate</p> <p>The contract does not stipulate that Toni must personally make the deliveries. She can organise for another suitably licensed truck driver to make the deliveries, but is responsible for paying the other truck driver.</p> <p>Contractor characteristic – Toni can subcontract/delegate the work.</p>
<p>Basis of payment</p> <p>Ralph is paid:</p> <ul style="list-style-type: none"> • an agreed amount per kilometre he drives • for the number of kilometres he has travelled each month. <p>Employee characteristic – Ralph is paid a price per item or activity.</p>	<p>Basis of payment</p> <p>Toni is paid to transport the business's products during 1 November to 24 December and will receive an agreed amount per delivery made as per the contract and initial quote. She will issue an invoice and receive payment from the seafood business.</p> <p>Contractor characteristic – Toni is paid for a specific result based on the quote she provided.</p>
<p>Equipment, tools and other assets</p> <p>The food manufacturing business provides Ralph with a refrigerated truck for his delivery schedule (it may be a different truck each time).</p> <p>Ralph uses the food manufacturing business's fuel card to purchase fuel at participating fuel stops along the route as required.</p>	<p>Equipment, tools and other assets</p> <p>Toni will use the refrigerated truck she leases to make the deliveries.</p> <p>Toni purchases fuel with her own money from any outlet she chooses.</p> <p>Contractor characteristic – Toni provides the assets required to complete the work.</p>

Employee characteristic – the food manufacturing business provides the assets required to complete the work.	
<p>Commercial risks</p> <p>If the refrigeration in the truck breaks down, the food manufacturing business is responsible for the cost of any spoilt stock. The business has taken out the relevant insurance.</p> <p>Employee characteristic – Ralph takes no commercial risks.</p>	<p>Commercial risks</p> <p>If the refrigeration in the truck breaks down, Toni will be responsible for the cost of any spoilt stock. Toni has taken out the relevant insurance.</p> <p>Contractor characteristic – Toni takes commercial risks.</p>
<p>Independence</p> <p>Ralph works on an ongoing basis for the food manufacturing business. He must do any work which is reasonably asked of him, including driving the truck on any routes the business gives him. Ralph cannot use the truck to do other work.</p> <p>Employee characteristic – Ralph is not operating independently of the food manufacturing business.</p>	<p>Independence</p> <p>During the period of the contract, Toni is also undertaking deliveries for several other local businesses. She is required to perform the services as specified in the contract with the local seafood business, but can accept or refuse additional work from them.</p> <p>Contractor characteristic – Toni is operating her own business independently of the seafood business.</p>

Cleaning

This example shows the differences between an employee and contractor in the cleaning industry.

Catherine is an employee	Karl is a contractor
A cleaning business has a contract to clean a small office building. A cleaner, Catherine, who works for the cleaning business, cleans the building.	A cleaner, Karl, has entered into an agreement to clean a small office building for one year.

<p>Control over the work Catherine is required to:</p> <ul style="list-style-type: none"> • clean the building each weeknight from 6.30pm – 10.30pm • carry out the cleaning work as instructed by the business. <p>The cleaning business does regular checks to ensure Catherine's work is meeting the required standards.</p> <p>Employee characteristic – the cleaning business has control over the work.</p>	<p>Control over the work Karl has access to the building. The cleaning work can be done at any time after office hours, from 6.00pm until 8.00am.</p> <p>Karl is not given any direct supervision and can complete the cleaning work as he sees fit provided it meets the requirements of the agreement.</p> <p>Contractor characteristic – Karl has freedom in the way the work is done, subject to the specific terms in the agreement.</p>
<p>Ability to subcontract/delegate If Catherine cannot do her shift, she can organise for another cleaner (who also works for the business) to fill in. Catherine needs to let the cleaning business know and they will pay the other cleaner for the extra shift.</p> <p>Employee characteristic – Catherine cannot subcontract/delegate the work.</p>	<p>Ability to subcontract/delegate The agreement is to clean the building. It does not specify who needs to do the work. If Karl chooses, he can pay someone else to perform the work.</p> <p>Contractor characteristic – Karl can subcontract/delegate the work.</p>
<p>Basis of payment Catherine is paid an hourly rate for the rostered shifts she works each week. The cleaning business pays her each week based on what is in her timesheets.</p> <p>Employee characteristic – Catherine is paid for the time worked.</p>	<p>Basis of payment Karl quoted a set amount to clean the building. Payment is conditional upon the building being cleaned to the requirements of the agreement and within the specified timeframe.</p> <p>Contractor characteristic – Karl is paid for a specific result based on the quote he provided.</p>

<p>Equipment, tools and other assets</p> <p>Catherine uses the cleaning equipment and products supplied by the business.</p> <p>Employee characteristic – the cleaning business provides the equipment and assets required to complete the work.</p>	<p>Equipment, tools and other assets</p> <p>Karl uses his own cleaning equipment and products to complete the work.</p> <p>Contractor characteristic – Karl provides the equipment and assets required to complete the work.</p>
<p>Commercial risks</p> <p>If Catherine damages anything when she is completing her work, she will need to let the cleaning business know and they will need to pay to have the damage rectified.</p> <p>Employee characteristic – Catherine takes no commercial risks.</p>	<p>Commercial risks</p> <p>If Karl does not perform to the standard required or damages the office building, he can be held liable for any resulting losses.</p> <p>Contractor characteristic – Karl takes commercial risks.</p>
<p>Independence</p> <p>Catherine is reliant on the cleaning business to assign her work and pay her for it.</p> <p>Catherine needs to do any work within her duty statement.</p> <p>Employee characteristic – Catherine is not operating independently of the cleaning business.</p>	<p>Independence</p> <p>Karl is required to perform the services as specified in the agreement. If Karl is offered additional cleaning work on the office building not covered by the existing agreement, he can either accept or reject this work.</p> <p>Contractor characteristic – Karl is operating his own business.</p>

Information technology

This example shows the differences between an employee and contractor in the information technology industry.

Ahn is an employee	Sara is a contractor
A software engineer, Ahn, works for a large business. He	A software engineer, Sara, enters into a contract with a

<p>designs, develops, tests and installs software programs.</p>	<p>retail business to design, develop, test and install a new software program.</p>
<p>Control over the work The business allocates work to Ahn and tells him the completion due date.</p> <p>Ahn must complete the work according to the business's established protocols, guidelines and quality standards.</p> <p>Employee characteristic – the business has control over the work.</p>	<p>Control over the work The contract states the new software program needs to:</p> <ul style="list-style-type: none"> • be operational within six months • complete specific software releases by set dates • meet the retail business's requirements and specifications. <p>Sara is able to determine how the work is completed.</p> <p>Contractor characteristic – Sara has freedom in the way the work is done, subject to the specific terms in the contract.</p>
<p>Ability to subcontract/delegate Ahn is required to complete tasks as assigned to him by the business. If Ahn is running late in meeting a project deadline, he may be able to assign aspects of his work to other software engineers who work for the business, depending on their workloads. The business pays the other software engineers.</p> <p>Employee characteristic – Ahn cannot subcontract/delegate the work.</p>	<p>Ability to subcontract/delegate The contract does not stipulate Sara must personally complete the work and focuses on the result to build and install software. Sara can pay someone else to complete the work.</p> <p>Contractor characteristic – Sara can subcontract/delegate the work.</p>
<p>Basis of payment As Ahn has recently completed his degree, the business has agreed to pay him a higher annual salary. They pay Ahn fortnightly for the agreed standard hours he</p>	<p>Basis of payment Sara quoted a price to design, develop, test and install the new software program. Sara will be paid progress payments upon specific</p>

<p>works plus any agreed overtime.</p> <p>Employee characteristic – Ahn is paid for the time worked.</p>	<p>stages of the project being satisfactorily completed.</p> <p>Contractor characteristic – Sara is paid for a specific result based on the quote she provided.</p>
<p>Equipment, tools and other assets</p> <p>Ahn uses the computer equipment and software provided by the business. On occasion, as agreed with the business, Ahn will work from home using his laptop to write the end-user documentation and operational procedures.</p> <p>Employee characteristic – the business provides the majority of the equipment and assets required to complete the work.</p>	<p>Equipment, tools and other assets</p> <p>Sara uses her own computer equipment and software. At designated stages of the project, Sara will also use the retail business's computers for short periods of time.</p> <p>Contractor characteristic – Sara provides the majority of the equipment and assets required to complete the work.</p>
<p>Commercial risks</p> <p>If there are faults in the work, or it is not completed on time, Ahn is not personally liable. The business would need to pay to correct the problem.</p> <p>Employee characteristic – Ahn takes no commercial risks.</p>	<p>Commercial risks</p> <p>If the software program does not meet the retail business's agreed requirements or does not perform to specification, Sara will be required to correct the problem at her own expense.</p> <p>Contractor characteristic – Sara takes commercial risks.</p>
<p>Independence</p> <p>Ahn works on an ongoing basis for the business and must do any work reasonably asked of him within his duty statement.</p> <p>Employee characteristic – Ahn is not operating independently of the business.</p>	<p>Independence</p> <p>Sara has her own website which promotes her services. She has another project to do after the contract with the retail business is completed and can choose whether she undertakes future projects for the retail business.</p> <p>Contractor characteristic – Sara is operating independently of the retail business.</p>

Building and construction

This example shows the differences between an employee and contractor in the building and construction industry.

Darren is an employee	Sam is a contractor
<p>A concreter, Darren, works for a local residential business. He pours concrete at new developments on behalf of the company.</p>	<p>Sam has been engaged by a local business to provide concreting services to a segment of its customer base. The business chose Sam because of his industry reputation in quality of his work and repeat business in this segment of the market.</p>
<p>Control over the work Darren is required to work at a job site from 5.30am – 3.00pm, Monday to Friday. Darren's supervisor overlooks the quality of the work and ensures the job is meeting the deadlines as per the contract.</p> <p>Employee characteristic – the business has control over the work.</p>	<p>Control over the work Based on their agreement, Sam is not directly supervised. In line with his agreement, Sam works from home and does not have set working hours per day.</p> <p>Contractor characteristic – Sam has freedom in the way the work is done, subject to the specific terms in the agreement.</p>
<p>Ability to subcontract/delegate Darren has been hired by the concreting business to undertake concreting work. He must personally perform the work requested of him.</p> <p>Employee characteristic – Darren cannot subcontract/delegate the work.</p>	<p>Ability to subcontract/delegate Sam does not need to personally complete the work himself. If Sam chooses, he can pay someone else to do the work; however, he remains responsible for meeting the specific results in the agreement.</p> <p>Contractor characteristic – Sam can subcontract/delegate the work.</p>

<p>Basis of payment Darren is paid an agreed amount for each hour he works.</p> <p>Employee characteristic – Darren is paid a price per item or activity.</p>	<p>Basis of payment Sam will be paid the amount he quoted to provide the concreting service once he meets the specific results outlined in the agreement.</p> <p>Contractor characteristic – Sam is paid for a specific result based on the quote he provided.</p>
<p>Equipment, tools and other assets The business provides Darren with the cement. Darren provides his own personal tools</p> <p>Employee characteristic – the business provides the majority of the equipment, tools and assets required to complete the work.</p>	<p>Equipment, tools and other assets As specified in the agreement, Sam is required to service these customers in response to a variable level of demand and maintain a high level of quality. Although equipment is not specified in the agreement Sam provides a concrete mixer, wheelbarrow, level, shovel and other tools required. He is responsible for paying the cement service bill.</p> <p>Contractor characteristic – Sam provides the equipment, tools and assets required to complete the work.</p>
<p>Commercial risks If a customer is unhappy with the work or the service Darren provides, they can make a complaint to the business. The business may take further action depending on the type of complaint. Darren is not personally responsible to the customer.</p> <p>Employee characteristic – Darren takes no commercial risks.</p>	<p>Commercial risks If Sam does not achieve the results specified in his agreement, he will not be paid. He also risks the business seeking compensation from him if the business's reputation is harmed as a result of poor customer feedback.</p> <p>Contractor characteristic – Sam takes commercial risks.</p>
<p>Independence Darren works on an ongoing basis for the business and must do any work reasonably</p>	<p>Independence Sam does concrete work for a number of businesses that require knowledge of a</p>

asked of him within his duty statement. Employee characteristic – Darren is not operating independently of the business.	particular service. At all times he works at job sites and is not directly supervised. At any time he can accept or refuse additional work. Contractor characteristic – Sam is operating his own business independently of the business that engaged him.
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See also:

- How to work it out: employee or contractor

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Employees treated as contractors

Penalties and charges if you incorrectly treat an employee as a contractor plus how to make a tip-off about a business.

1 July 2019

It's against the law for a business to incorrectly treat their employees as contractors. Businesses that do this are illegally lowering their labour costs by:

- not meeting their tax and super obligations
- denying workers their employee entitlements.

Businesses that behave this way can often undercut their competitors and obtain an unfair competitive advantage.

Find out about:

- [Penalties and charges](#)
- [How to report a business](#)
- What to do if a worker wants to be a contractor

Penalties and charges

Businesses risk receiving penalties and charges, including:

- PAYG withholding penalty – for failing to deduct tax from worker payments and send it to us
- super guarantee charge, made up of
 - super guarantee shortfall amounts – the amount of super contributions that should have been paid into a complying fund
 - interest charges
 - an administration fee
- additional super guarantee charge of up to 200%.

In addition to the super guarantee charge – which imposes nominal interest and an administrative charge in all cases on top of the super guarantee shortfall – we can impose additional penalties of up to 200% of the super guarantee charge.

How to report a business

If you know or suspect a business is incorrectly treating an employee as a contractor it is important you let us know.

You can provide a tip-off about a business that is incorrectly treating an employee as a contractor by:

- completing the **tip-off form**. This form is also available in the Contact us section of the **ATO app**
- phoning **1800 060 062**.

Your information is treated confidentially and tip-offs can be made without giving your name if you don't want to.

However, providing us with your contact information means we can talk to you if we need to better understand the information you provided. We will only contact you if you tell us it is ok to do so.

What to do if a worker wants to be a contractor



33198

What to do if a worker wants to be a contractor

Find out what to do if a worker demands to be treated as a contractor, even though they are an employee.

24 November 2022

Pressure to incorrectly treat employees as contractors

If your business accepts an invalid contracting arrangement, you may face penalties and other charges for failing to comply with your obligations. Don't agree to break the law. Discuss the information we provide on our [employee or contractor pages](#) with the worker. You can also seek professional advice if required.

Paying super to contractors

If you pay contractors under a contract that is wholly or principally for their labour, you have a legal obligation to pay super contributions for them into a complying fund.

Your business cannot contract away its legal obligations to pay super even if the contractor agrees.

Giving contractors employment conditions

Sometimes workers who request to be engaged as contractors also request conditions that only apply to employment, such as the ability to salary sacrifice or to be paid tax-free living away from home allowances.

Access to these conditions is a clear sign that the underlying arrangement is employment, not contracting.

Your tax and super obligations

Your tax, super and other government obligations vary depending on whether your worker is an employee or contractor.

6 January 2017

If your worker is an employee you'll need to:

- withhold tax (PAYG withholding) from their wages and report and pay the withheld amounts to us
- pay super, at least quarterly, for eligible employees
- report and pay fringe benefits tax (FBT) if you provide your employee with fringe benefits.

If your worker is a contractor:

- they generally look after their own tax obligations, so you don't have to withhold from payments to them unless they don't quote their ABN to you, or you have a voluntary agreement with them to withhold tax from their payments
- you may still have to pay super for individual contractors if the contract is principally for their labour
- you don't have FBT obligations.

Remember, it's against the law to wrongly treat an employee as a contractor so you need to check that you've got it right. If you don't get it right, penalties may apply.

See also:

- [Your workers checklists to work out tax and super obligations.](#)
- [Fringe benefits tax \(FBT\)](#)

Myths and facts

Common myths can cause many businesses to get it wrong when working out whether a worker is an employee or contractor.

17 October 2022

Myth: If a worker has an ABN they're a contractor

Fact: Having an ABN makes no difference to whether a worker is an employee or contractor for a job.

Businesses sometimes request or pressure a worker who is an employee to obtain an ABN in the belief this will make the worker a contractor. Often these businesses attempt to disguise the employment arrangement and make it look like contracting to avoid their PAYG withholding and super obligations.

If the working arrangement is employment, an ABN will not make the worker a contractor.

Myth: Everyone in my industry takes on workers as contractors, so my business should too

Fact: Just because other businesses treat workers as contractors doesn't mean they have got it right.

Ignore common industry practice when determining whether your worker is an employee or contractor.

Myth: Employees can't be used for short jobs or to get extra work done during busy periods

Fact: The length of a job or regularity of work makes no difference to whether a worker is an employee or contractor.

Both employees and contractors can be used for:

- casual, temporary, on-call and infrequent work
- busy periods
- short jobs, specific tasks and projects.

Myth: A worker cannot work more than 80% of their time for one business if they want to be considered a contractor

Fact: The 80% rule, or 80/20 rule as it is sometimes called, relates to personal services income (PSI) and can change how a contractor:

- reports their income in their own tax return
- claims some business-like deductions.

It's not a factor a business considers when they work out whether a worker is an employee or contractor.

Myth: My business has always used contractors, so we don't need to check whether new workers are employees or contractors

Fact: Before hiring a new worker, you should always check whether the worker is an employee or contractor by examining the working arrangement.

Unless a working arrangement (including the specific terms and conditions under which the work is done) is *identical* to a previous arrangement you've already checked, the outcome could be different.

Hiring workers without checking the working arrangement could mean the business is incorrectly treating all future workers as contractors when they are employees.

Myth: If a worker has a registered business name, they're a contractor

Fact: Having a registered business name makes no difference to whether a worker is an employee or contractor.

Myth: If a worker is a contractor for one job, they will be a contractor for all jobs

Fact: The working arrangement and specific terms and conditions will determine whether a worker is an employee or contractor for each job. A worker could be an employee for one job and a contractor for the next job.

Myth: My business should only take on contractors so we don't have to worry about super

Fact: Businesses may be required to pay super for their contractors. If you pay an individual contractor under a contract that is wholly or principally for the person's labour, you have to pay super contributions for them.

Myth: Workers used for their specialist skills or qualifications should be engaged as contractors

Fact: If a business takes on a worker for their specialist skills or qualifications it doesn't automatically mean they're a contractor.

A worker with specialist skills or qualifications can be either an employee or contractor depending on the terms and conditions under which the work is done.

Myth: My worker wants to be a contractor, so my business should treat them as one

Fact: Just because a worker has a preference to work as a contractor doesn't mean your business can engage them as a contractor.

Whether a worker is an employee or contractor is not a matter of choice, but depends entirely on the working arrangement and the specific terms and conditions.

If you give into pressure and agree to treat an employee as a contractor, you can face penalties and charges for not meeting your tax and super obligations.

Myth: If a worker submits an invoice for their work, they're a contractor

Fact: Submitting an invoice for work done or being 'paid on invoice' doesn't make a worker a contractor.

To know whether a worker is an employee or contractor, you need to look at the whole working arrangement and examine the specific terms and conditions.

Myth: If a worker's contract has a section that says they are a contractor, then legally they're a contractor

Fact: If a worker is legally an employee, a contract saying the worker is a contractor will not make the worker a contractor at law.

Businesses and workers will sometimes include specific words in a written contract to say that the working arrangement is contracting in the mistaken belief that this will make the worker a contractor at law.

If a worker is legally an employee, a contract specifying the worker is a contractor makes no difference and will not:

- override the employment relationship or change the worker into a contractor
- change the PAYG withholding and super obligations a business is required to meet.

Authorised by the Australian Government, Canberra.

Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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