Print whole section

Employee or independent contractor

Work out if your worker is an employee or independent contractor as it affects your tax, super and other obligations.

Difference between employees and independent contractors

Employees work in and are part of your business. Independent contractors provide services to a principal's business.

Employees incorrectly treated as independent contractors

See penalties and charges if you incorrectly treat an employee as a contractor, and how to report such a business.

Your tax and super obligations

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

Myths and facts

QC 33182

Difference between employees and independent contractors

Employees work in and are part of your business. Independent contractors provide services to a principal's business.

Last updated 17 December 2024

High court decision affecting advice and guidance

The High Court judgments in CFMMEU v Personnel Contracting [2022] HCA 1 and ZG Operations v Jamsek [2022] HCA 2 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.

To work out if your worker is an employee or independent contractor, you need to determine whether your worker is serving in your 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 may also be wholly oral or a hybrid of any combination or written terms, oral terms and terms implied from conduct. Your contract may also be varied based on you 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.

Classifying your worker

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.

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

If you are engaging a worker who you believe is an independent contractor, you can choose to pay them super to ensure you're 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.

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 (that is, the terms of the contract) agreed to between you and your worker.

Superannuation obligations still may apply to certain independent contractors

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

These circumstances include if the worker:

- works under a contract that is wholly or principally for their labour
- performs work that is wholly or principally of a domestic nature for more than 30 hours per week

- is 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
- is a person paid to provide services in connection with any performance, presentation or participation in these activities
- is 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 natural person. If you've hired a company, trust, or partnership to do the work, this is the 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 firm and pay that firm for the work undertaken by the worker in your business, your business has a contract with the labour hire firm and not the worker. It is the labour hire firm that is responsible for pay as you go (PAYG) withholding, super and fringe benefits tax obligations for the worker. Labour hire firms may be called different names, including on-hire firms, 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 wholly written, wholly oral or any combination of written term, oral terms and terms implied from conduct.

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

Employee or independent contractor traits

The following table outlines each indicium and some features that may point towards or against a finding of employment. No single indicium is determinative and they should not be applied as if they are a checklist. 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. Conduct and work practices are not relevant, unless they are, among other things, sufficient to vary the contractual terms agreed to.

Table: Employee and independent contractor indicium and traits

Employee	Independent 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.
Mode of remuneration: the worker is paid either: • for the time worked • a price per item or activity • a commission.	Mode of remuneration: the worker is generally contracted to achieve a specific result, and is paid when they have completed that result, often for a fixed fee.
Ability to subcontract or delegate: there is no clause in the contract allowing the worker to delegate or subcontract their work to others. The worker must perform the work themselves and cannot pay someone else to do the work for them.	Ability to subcontract or delegate: there is a clause in the contract allowing the worker the right to delegate or subcontract their work to others. The clause must not be a sham and must be legally capable of exercise.
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.	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. The work involves the use of a substantial item that your worker is wholly responsible for.
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.	Risk: the worker bears the commercial risk for any costs arising out of injury or defect in their work.
Generation of goodwill: your business benefits from any	Generation of goodwill: the worker's business benefits

goodwill arising from the work of the worker.	from any goodwill generated from their work, not your business.

Ability to delegate or subcontract

To determine if a worker is an employee or independent contractor, consider if work can be delegated to another person.

Basis of payment

When working out if a worker is an employee or an independent contractor, you must consider the basis of payment.

Equipment, tools and other assets

Is your worker an employee or an independent contractor? You must consider who provides the tools needed for the work.

Commercial risks

Determine if a worker is an employee or independent contractor consider who bears the risk for rectifying work defects.

Control over work

To classify a worker as an employee or independent contractor, you must consider who controls the way the work is done.

Integration within your business

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

Industry examples

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

QC 33189

Worker's ability to delegate or subcontract their work

To determine if a worker is an employee or independent contractor, consider if work can be delegated to another person.

Last updated 22 April 2024

To determine if a worker is an employee or independent contractor based on the legal rights and obligations (i.e. the terms) in the contract you entered into with your worker, consider whether a worker's agreement allows them to pay another person to do the work for them.

Worker can't delegate or subcontract their work

This is a characteristic of an employee.

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

- the contract requires them to personally do the work
- the contract does not contain a right which allows the worker to delegate or subcontract their work
- a worker can't do the work themselves and they organise or are contractually required to organise for another person to do it, but your business pays the other person – this is substitution, not delegation or subcontracting the work.

Example: a worker can't delegate or subcontract their work

A commercial cleaning business has a contract to clean several 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** delegated or subcontracted the work.

Worker can delegate or subcontract their work

Having a contractual right to delegate or subcontract work is a characteristic that strongly indicates the worker is an independent contractor.

A worker can delegate or subcontract their work if they can contractually pay another person to do the work and this right is not:

- limited in scope (i.e. only discrete tasks can be delegated or subcontracted)
- legally incapable of exercise
- a sham.

Example: a worker can delegate or subcontract their 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:

- that Con has the right to subcontract his work to another person

- that the person to who Con subcontracts his work must be a suitably qualified massage therapist who has a current police clearance and the appropriate insurance to do the work.

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

- Con organises for another massage therapist suitably qualified 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.

Because Con organised for another person to perform his work he was required to pay that person to do the work, because he **has** subcontracted the work.

QC 33176

Basis of payment

When working out if a worker is an employee or an independent contractor, you must consider the basis of payment.

Last updated 15 April 2024

When working out whether a worker is an employee or an independent contractor based on the legal rights and obligations (that is, the terms) in the contract you entered into with your worker, 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: set amount per period

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.

Under the contracts between the supermarket trolley collection business and the trolley collectors, 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 number 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: price per item or activity

A business has a team of telemarketers who sell their products and services. Under the contracts between the business and the telemarketers, 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're paid:

- a specific amount for each item they produce
- 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 an independent 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: quoted price for an agreed or pre-determined result

A retail business needs to have the windows of its 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 4 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.

QC 33177

Equipment, tools and other assets

Is your worker an employee or an independent contractor? You must consider who provides the tools needed for the work.

Last updated 16 April 2024

When working out whether a worker is an employee or an independent contractor based on the legal rights and obligations (that is, the terms) in the contract you entered into with your worker, 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: employer provides the tools

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.

Under the contract between Henry and the golf club, the club is responsible for providing all necessary tools, equipment and other assets for Henry to complete his work.

However, Henry does bring along a few inexpensive hand tools of his own, as he prefers using them. 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 contractually responsible for providing the equipment, tools or other assets needed for Henry to do the work.

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

This is a characteristic of an independent 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: worker provides the tools

Jeff is a garden maintenance worker who has a contract with a business to maintain its lawns and gardens on a fortnightly basis. The contract requires Jeff to use his own tools, equipment and assets to complete his work.

As required by the contract, Jeff provides all his own equipment and tools to complete the job, including a:

- lawnmower
- line trimmer
- blower vac
- hedge trimmer

- 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 (it doesn't provide any other payments to Jeff).

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

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

QC 33187

Commercial risks

Determine if a worker is an employee or independent contractor consider who bears the risk for rectifying work defects.

Last updated 15 April 2024

To determine if a worker is an employee or independent contractor based on the legal rights and obligations (that is, the terms) in the contract you entered into with your worker, consider their integration within your business.

Workers who don't bear the risk

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 the 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, accidently 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 between the commercial cleaning business and the small office, the business is liable for the damage and has to pay for the carpet to be replaced. Pursuant to the contract between Brayden and the commercial cleaning business, Brayden is not required to rectify or pay for the rectification of any damage he causes in carrying out his work. While Brayden receives a reprimand from the business, he is not contractually 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 who do bear the risk

This is a characteristic of an independent 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: independent 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 of its premises. 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.

QC 33188

Control over work

To classify a worker as an employee or independent contractor, you must consider who controls the way the work is done.

Last updated 15 April 2024

To determine whether a worker is an employee or an independent contractor based on the legal rights and obligations (that is, the terms) in the contract you entered into with your worker, 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: business controls the way work is done

A telecommunication business hires a worker to answer inbound calls in its 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.

Under the contract between the telecommunication business and the call centre worker, workers have 5 shifts each week, which the business rosters. Workers are supervised and must perform their work in accordance with the business's practices and procedures

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 an independent 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: worker can decide the way work is done

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

Under the contract between the domestic house builder and the stylist, 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.

QC 33196

Integration within your business

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

Last updated 15 April 2024

To determine if a worker is an employee or independent contractor based on the legal rights and obligations (that is, the terms) in the contract you entered into with your worker, consider their integration within your business.

Worker represents or performs work in your business

This is a characteristic of an employee.

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

Example: worker serving in your business

A hotel has room attendants to clean and vacuum and 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 provides services to your business

This is a characteristic of an independent 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.

Employees incorrectly treated as independent contractors

See penalties and charges if you incorrectly treat an employee as a contractor, and how to report such a business.

Last updated 29 August 2025

Penalties and charges

Businesses who incorrectly treat an employee as an independent contractor risk receiving penalties and charges, including:

- PAYG withholding penalty for failing to deduct tax from worker payments and send it to the ATO
- super guarantee charge (SGC), which is more than the super that would have been paid if the worker was classified correctly. SGC consists of:
  - super guarantee shortfall amount
  - nominal interest
  - an administration fee
- additional super guarantee penalties including the Part 7 penalty amount of up to 200% of the SGC under the *Superannuation Guarantee (Administration) Act 1992*.

Sham contracting - Fair Work Ombudsman is a contravention under the *Fair Work Act 2009*. Courts can impose penalties against a business or person that incorrectly tells an employee they are an independent contractor, when in fact they're an employee of the business.

For more information, see:

- Employee or independent contractor
- What to do if a worker wants to be an independent contractor

How to report a business

If you know or suspect a business is incorrectly treating an employee as an independent contractor, let us know by Making a tip-off.

What to do if a worker wants to be a independent contractor

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

QC 33198

What to do if a worker wants to be a independent contractor

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

Last updated 17 June 2024

Pressure to incorrectly treat employees as independent 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 independent contractor pages with the worker. You can also seek professional advice if required.

Paying super to independent contractors

If you pay independent 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 can't contract away its legal obligations to pay super even if the independent contractor agrees.

Giving independent contractors employment conditions

Sometimes workers who request to be engaged as independent 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.

QC 26276

Your tax and super obligations

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

Last updated 17 April 2026

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
- calculate and pay the correct amount of super guarantee for each payday (if they are eligible)
- report and pay fringe benefits tax (FBT) if you provide your employee with fringe benefits.

If your worker is an independent 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 independent 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 an independent contractor so you need to check that you've got it right. If you don’t get it right, penalties may apply.

Watch 'Before a worker starts' for more information on the checks to complete before a new worker starts.

Media: Before a worker starts https://tv.ato.gov.au/ato-tv/media?v=bi9or7ornzkwex (**Duration:** 0:55)

For more information see:

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

QC 33192

Myths and facts

Common myths causing businesses to get it wrong when determining if a worker is an employee or independent contractor.

Last updated 17 June 2024

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

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

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

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

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

Both employees and independent contractors can be used for:

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

Myth: A worker can't work more than 80% of their time for one business if they want to be considered an independent contractor

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

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

Fact: Before hiring a new worker, you should always check whether the worker is an employee or independent 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 independent contractors when they are employees.

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

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

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

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

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

Fact: Businesses may be required to pay super for their independent 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 independent contractors

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

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

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

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

Whether a worker is an employee or independent 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 an independent 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 an independent contractor

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

To know whether a worker is an employee or independent 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 an independent contractor, then legally they're an independent contractor

Fact: If a worker is legally an employee, a contract saying the worker is an independent contractor won't make the worker an independent 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 an independent contractor at law.

If a worker is legally an employee, a contract specifying the worker is an independent contractor makes no difference and won't:

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

Authorised by the Australian Government, Canberra.

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