

EMPLOYEE VS CONTRACTOR GUIDE

If you hire a worker you must check if they are an employee or contractor.

It's important because:

- it affects your tax, super and other obligations
- penalties and charges may apply if you get it wrong.

If you previously hired a worker without checking, review your decision now to make sure you got it right.

A lot of business's hire contractors as it's normally the simplest and quickest way to engage a person for work, however the Australian Taxation Office (ATO) and the regulatory bodies (Superannuation and Workers Compensation), reserve the right to review the contractor relationship and they can then deem that worker an employee. This then creates an obligation of the business to pay superannuation and cover the workers insurance (workers compensation).

The ATO and other bodies also reserve the right to backdate any previously owed obligation that haven't been met.

Below is a table that summaries the difference between an "Employee" and a true "Contractor". You will need to review the below table each time you engage a worker to make sure you are covering all obligations that need to be met in relation to that worker:

Employee	Contractor
Ability to subcontract/delegate: the worker can't subcontract/delegate the work – they can't pay someone else to do the work.	Ability to subcontract/delegate: the worker can subcontract/delegate the work – they can pay someone else to do the work.
Basis of payment – the worker is paid either: <ul style="list-style-type: none"> • for the time worked • a price per item or activity • a commission. 	Basis of payment: the worker is paid for a result achieved based on the quote they provided. A quote can be calculated using hourly rates or price per item to work out the total cost of the work.
Equipment, tools and other assets: <ul style="list-style-type: none"> • 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 equipment, tools and other assets required to complete the work, but your business provides them with an allowance or reimburses them for the cost of the equipment, tools and other assets. 	Equipment, tools and other assets: <ul style="list-style-type: none"> • the worker provides all or most of the equipment, tools and other assets required to complete the work • the worker does not receive an allowance or reimbursement for the cost of this equipment, tools and other assets.

<p><u>Commercial risks:</u> the worker takes no commercial risks. Your business is legally responsible for the work done by the worker and liable for the cost of rectifying any defect in the work.</p>	<p><u>Commercial risks:</u> the worker takes commercial risks, with the worker being legally responsible for their work and liable for the cost of rectifying any defect in their work.</p>
<p><u>Control over the work:</u> your business has the right to direct the way in which the worker does their work.</p>	<p><u>Control over the work:</u> the worker has freedom in the way the work is done, subject to the specific terms in any contract or agreement.</p>
<p><u>Independence:</u> the worker is not operating independently of your business. They work within and are considered part of your business.</p>	<p><u>Independence:</u> the worker is operating their own business independently of your business. The worker performs services as specified in their contract or agreement and is free to accept or refuse additional work.</p>

If you are hiring a company, trust or partnership then this is deemed a contractor relationship for taxation and superannuation purposes.

To make the decision easier for you, the ATO have a handy 'decision tool' to assist. This can be found [HERE](#).

If you have any hesitation about whether you are engaging your workers through the correct relationship, please do not hesitate to contact your accountant today to discuss on 02 9907 3488.