

AM I AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR?



HOW TO TELL THE DIFFERENCE

Employees and independent contractors can "look and feel" the same, but they have different rights, so it is important to know which one you are. There are lots of factors that are relevant to figuring it out, but the answer will be based on your individual circumstances as a whole.

The table below sets out some common factors to look out for:

| | EMPLOYEE | INDEPENDENT CONTRACTOR |
|-------------------------------|--|--|
| Level of control | You don't have much control over the way you work – you work under the direction of your boss or manager. | You have a lot of control over your job and the way you do your work. |
| Hours of work | You generally work set hours on an ongoing basis (unless you're a casual employee or a fixed-term employee). | You decide what hours you want to work, as long as you complete the specific job you've been asked to do. |
| Leave entitlements | You are entitled to paid leave, eg sick leave and annual leave (unless you're a casual employee). | You are not entitled to any form of paid leave. |
| Income payments | You are paid regularly into your bank account, eg weekly or monthly. | You have an ABN and you are paid via invoices for any work completed. |
| Tax and superannuation | Income tax and superannuation is taken from your pay on a regular basis. | You pay your own taxes directly to the ATO, have an ABN and charge GST and usually you pay your own super. |
| Level of risk | You don't take on any financial risk, and your employer is insured on your behalf. | You take on financial risk for work you do (eg whether you make a profit or loss) and you have your own insurance. |
| Tools/equipment | You are given any tools/equipment that you need to do your job. | You use your own tools/equipment to do your job. |

SHAM CONTRACTING ARRANGEMENTS

Some employers may try to make your employment relationship look like an independent contracting arrangement to save themselves money, when in fact you are actually an employee. They might try to do this because they are trying to avoid giving you the entitlements that you are owed as an employee, like providing your work-related equipment to you, or letting you take paid sick or annual leave. This is called a "**sham contracting arrangement**" and it is illegal under Australian law.

It is unlawful for your employer to:

- say that your employment relationship is an independent contracting arrangement when it isn't
- fire you (or threaten to fire you) so that they can then hire you as an independent contractor
- knowingly lie to you to try to convince you to become an independent contractor.

There are serious financial penalties for any employers who engage in sham contracting arrangements. If you think this might have happened to you – we can help you, and we may be able to give you free and confidential legal advice. To get our help, you can call us on 02 8002 1203 or text us on 0475 360 241 or email us at info@mels.org.au to speak to us about your situation.



The information provided in this factsheet is for information only. It must not be relied on as legal advice. You should seek legal advice about your own situation.