



Australian Government  
Australian Taxation Office

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# Employee or contractor

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- <https://www.ato.gov.au/Business/Employee-or-contractor/>  
(<https://www.ato.gov.au/Business/Employee-or-contractor/>).
- Last modified: 06 Jan 2017
- QC 33182

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.

## Next step:

- [How to work it out: employee or contractor \(/business/employee-or-contractor/how-to-work-it-out--employee-or-contractor/\)](#).

## Find out about:

- [Difference between employees and contractors \(/business/employee-or-contractor/difference-between-employees-and-contractors/\)](#).
- [Employees treated as contractors \(/business/employee-or-contractor/employees-treated-as-contractors/\)](#).
- [Your tax and super obligations \(/business/employee-or-contractor/your-tax-and-super-obligations/\)](#).
- [Myths and facts \(/business/employee-or-contractor/myths-and-facts/\)](#).

# How to work it out: employee or contractor

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- <https://www.ato.gov.au/Business/Employee-or-contractor/How-to-work-it-out--employee-or-contractor/> (<https://www.ato.gov.au/Business/Employee-or-contractor/How-to-work-it-out--employee-or-contractor/>).
- Last modified: 06 Jan 2017
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To check if your worker is an employee or contractor, you need to review the whole working arrangement. The easiest way is to use our decision tool.

## Employee or contractor decision tool

You can use the Employee/contractor decision tool to work out if your worker is an employee or contractor for tax and super purposes. Simply answer questions about the working arrangement and you'll generate a report that you can keep for your records. If you answer each question accurately and honestly, you can rely on the results.

**Employee or contractor decision tool** (/Calculators-and-tools/Host/?  
**anchor=ECDTSGET#ECDTSGET)**

### On this page:

- [Some workers are always employees](#)
- [Companies, trusts and partnerships are always contractors](#)
- [Labour hire or on-hire arrangements](#)
- [Hiring individuals](#)

## Some workers are always employees

Any of the following types of workers are **always** treated as employees:

- apprentices
- trainees
- labourers
- trades assistants.

Apprentices and trainees do a combination of 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, which 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. The work arrangement for apprentices and trainees is employment. You must meet the same tax and super obligations as you do for any other employees of your business.

## 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, then it is a contracting relationship for tax and super purposes. The people who actually 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 have obtained your worker through a labour hire (or on-hire) firm and pay that firm for the work undertaken in your business, then your business has a contract with the labour hire firm and they are responsible for the PAYG withholding, super and FBT obligations. Labour hire firms can be called different names including recruitment services and group training organisations (where your business is referred to as the 'host employer').

## Hiring individuals

If you've hired an individual, it is the details within the working agreement or contract that determines if they are a contractor or employee for tax and super purposes. The agreement or contract your business has with the worker can be written or verbal.

## Difference between employees and contractors

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- <https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/> (<https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/>).
- Last modified: 06 Jan 2017
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An employee works in your business and is part of your business. A contractor is running their own business.

The table below outlines six of the factors that, taken together, determine whether a worker is an employee or contractor for tax and super purposes. Follow the links in the table for more information about each factor.

## Employee or contractor

Employee	Contractor
<p><a href="/business/employee-or-contractor/difference-between-employees-and-contractors/ability-to-subcontract/delegate/">Ability to subcontract/delegate (/business/employee-or-contractor/difference-between-employees-and-contractors/ability-to-subcontract/delegate/)</a>: the worker can't subcontract/delegate the work – they can't pay someone else to do the work.</p>	<p><a href="/business/employee-or-contractor/difference-between-employees-and-contractors/ability-to-subcontract/delegate/">Ability to subcontract/delegate (/business/employee-or-contractor/difference-between-employees-and-contractors/ability-to-subcontract/delegate/)</a>: the worker can subcontract/delegate the work – they can pay someone else to do the work.</p>
<p><a href="/business/employee-or-contractor/difference-between-employees-and-contractors/basis-of-payment/">Basis of payment (/business/employee-or-contractor/difference-between-employees-and-contractors/basis-of-payment/)</a> – the worker is paid either:</p> <ul style="list-style-type: none"> <li>• for the time worked</li> <li>• a price per item or activity</li> <li>• a commission.</li> </ul>	<p><a href="/business/employee-or-contractor/difference-between-employees-and-contractors/basis-of-payment/">Basis of payment (/business/employee-or-contractor/difference-between-employees-and-contractors/basis-of-payment/)</a>: the worker is paid for a result achieved based on the quote they provided.</p> <p>A quote can be calculated using hourly rates or price per item to work out the total cost of the work.</p>

<p><u>Equipment, tools and other assets (/business/employee-or-contractor/difference-between-employees-and-contractors/equipment,-tools-and-other-assets/)</u>:</p> <ul style="list-style-type: none"> <li>• your business provides all or most of the equipment, tools and other assets required to complete the work, or</li> <li>• 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.</li> </ul>	<p><u>Equipment, tools and other assets (/business/employee-or-contractor/difference-between-employees-and-contractors/equipment,-tools-and-other-assets/)</u>:</p> <ul style="list-style-type: none"> <li>• the worker provides all or most of the equipment, tools and other assets required to complete the work</li> <li>• the worker does not receive an allowance or reimbursement for the cost of this equipment, tools and other assets.</li> </ul>
<p><u>Commercial risks (/business/employee-or-contractor/difference-between-employees-and-contractors/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 (/business/employee-or-contractor/difference-between-employees-and-contractors/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 (/business/employee-or-contractor/difference-between-employees-and-contractors/control-over-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 (/business/employee-or-contractor/difference-between-employees-and-contractors/control-over-work/)</u>: the worker has freedom in the way the work is done, subject to the specific terms in any contract or agreement.</p>

Independence (/business/employee-or-contractor/difference-between-employees-and-contractors/independence/): the worker is not operating independently of your business. They work within and are considered part of your business.

Independence (/business/employee-or-contractor/difference-between-employees-and-contractors/independence/): 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.

## Ability to subcontract/delegate

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- <https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Ability-to-subcontract/delegate/> (<https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Ability-to-subcontract/delegate/>).
- Last modified: 06 Jan 2017
- QC 33176

When working out whether a worker is an employee or contractor, one factor to consider is whether the agreement or contract gives the worker the right to pay another person to do the work instead of them.

The agreement or contract your business has with the worker can be in writing or verbal.

## Worker can't subcontract/delegate the work

This is a characteristic of an employee. A worker can't subcontract/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.

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### Example

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 organises Ben to cover 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/delegated the work.

## Worker can subcontract/delegate the work

This is a characteristic of a contractor.

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

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### Example

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 contractually not required to do the work personally and could pay another person to do the work, he **has** subcontracted/delegated the work.

### Next step:

- [Basis of payment \(/business/employee-or-contractor/difference-between-employees-and-contractors/basis-of-payment/\)](/business/employee-or-contractor/difference-between-employees-and-contractors/basis-of-payment/).

# Basis of payment

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- <https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Basis-of-payment/>  
(<https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Basis-of-payment/>).
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- QC 33177

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.

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### 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.

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## 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**.

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## 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 \(/business/employee-or-contractor/difference-between-employees-and-contractors/equipment,-tools-and-other-assets/\)](#).

# Equipment, tools and other assets

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- [https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Equipment,-tools-and-other-assets/](https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Equipment,-tools-and-other-assets/(https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Equipment,-tools-and-other-assets/))  
(<https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Equipment,-tools-and-other-assets/>).
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- QC 33187

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.

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### 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 \(/business/employee-or-contractor/difference-between-employees-and-contractors/commercial-risks/\)](/business/employee-or-contractor/difference-between-employees-and-contractors/commercial-risks/).

## Commercial risks

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- <https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Commercial-risks/>  
(<https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Commercial-risks/>).
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- QC 33188

When working out whether a worker is an employee or contractor, one factor to consider is whether the worker bears the legal risk and is liable for rectifying, at their own expense, any defect in the work.

### Worker does not take commercial risks

This is a characteristic of an employee.

The worker does not take commercial risks if your business:

- bears the legal risk for the work and 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 taken a commercial risk.

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### Example

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 take commercial risks as he is not responsible for his work and the business has to pay to have the defect in the work rectified.

## Worker takes commercial risks

This is a characteristic of a contractor.

The worker takes commercial risks if:

- the worker bears the legal risk for the work and is 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.

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### Example

Robert is a pest controller carries out an annual pest spray for a business. 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 takes commercial risks as he bears the legal risk for his work and rectification is at his own expense.

### Next step:

- [Control over work \(/business/employee-or-contractor/difference-between-employees-and-contractors/control-over-work/\)](https://www.ato.gov.au/Business/Employee-or-contractor/difference-between-employees-and-contractors/control-over-work/).

## Control over work

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- <https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Control-over-work/>  
(<https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Control-over-work/>).
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- QC 33196

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.

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### 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.

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### 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 \(/business/employee-or-contractor/difference-between-employees-and-contractors/independence/\)](https://www.ato.gov.au/printfriendly.aspx?url=/Business/Employee-or-contractor/Difference-between-employees-and-contractors/independence/).

## Independence



- <https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Independence/>  
(<https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Independence/>).
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- QC 33179

When working out whether a worker is an employee or contractor, one factor to consider is whether the worker is operating independently of your business.

## Worker is not operating independently of your business

This is a characteristic of an employee.

The worker is not operating independently of your business if they work within and are considered part of your business. That is, there is only a single business being operated (your business).

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### Example

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

The room attendants:

- 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 is operating independently of your business

This is a characteristic of a contractor.

The worker is operating independently of your business if they are operating their own business.

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

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## Example

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 table, oils and so on 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, but as specified in their agreement 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 is operating independently of the hotel as the massage therapist:

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

## Next step:

- [Industry examples \(/business/employee-or-contractor/difference-between-employees-and-contractors/industry-examples/\)](#).

# Industry examples

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- <https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Industry-examples/>  
(<https://www.ato.gov.au/Business/Employee-or-contractor/Difference-between-employees-and-contractors/Industry-examples/>).
- Last modified: 06 Jan 2017
- QC 50848

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

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

## Domestic painting

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

<b>Clarissa is an employee</b>	<b>Vince is a contractor</b>
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.	A domestic painter, Vince, has been engaged by a local retirement village to paint the interior of some of their home units.

<p><b>Control over the work</b></p> <p>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><b>Control over the work</b></p> <p>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><b>Ability to subcontract/delegate</b></p> <p>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><b>Ability to subcontract/delegate</b></p> <p>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><b>Basis of payment</b></p> <p>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><b>Basis of payment</b></p> <p>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><b>Equipment, tools and other assets</b></p> <p>Clarissa uses the painting business's tools, equipment and materials.</p> <p>She drives her own ute to and from the worksite each day.</p> <p>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><b>Equipment, tools and other assets</b></p> <p>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><b>Commercial risks</b></p> <p>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"> <li>• do the work during her standard working hours and the painting business will pay her for those hours</li> <li>• use the painting business's equipment, tools and materials to rectify the poor workmanship.</li> </ul> <p>Employee characteristic – Clarissa takes no commercial risks.</p>	<p><b>Commercial risks</b></p> <p>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>

<p><b>Independence</b></p> <p>Clarissa works on an ongoing basis for the painting business and must do any painting work they request. Employee characteristic – Clarissa is not operating independently of the painting business.</p>	<p><b>Independence</b></p> <p>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). Contractor characteristic – Vince is operating his own business independently of the retirement village.</p>
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## Road transport

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

<b>Ralph is an employee</b>	<b>Toni is a contractor</b>
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><b>Control over the work</b></p> <p>The food manufacturing business requires Ralph to:</p> <ul style="list-style-type: none"> <li>• make deliveries according to their monthly schedule and procedures</li> <li>• complete and submit a logbook documenting his driving hours and kilometres.</li> </ul> <p>Employee characteristic – the food manufacturing business has control over the work.</p>	<p><b>Control over the work</b></p> <p>The seafood business's products must be delivered for the period 1 November to 24 December in a specified delivery region. Provided the deliveries are made on the required day, Toni can determine how and in what order the deliveries are made. Contractor characteristic – Toni has freedom in the way the work is done, subject to the terms in the contract.</p>

<p><b>Ability to subcontract/delegate</b></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><b>Ability to subcontract/delegate</b></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><b>Basis of payment</b></p> <p>Ralph is paid:</p> <ul style="list-style-type: none"> <li>• an agreed amount per kilometre he drives</li> <li>• for the number of kilometres he has travelled each month.</li> </ul> <p>Employee characteristic – Ralph is paid a price per item or activity.</p>	<p><b>Basis of payment</b></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><b>Equipment, tools and other assets</b></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>Employee characteristic – the food manufacturing business provides the assets required to complete the work.</p>	<p><b>Equipment, tools and other assets</b></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>
<p><b>Commercial risks</b></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><b>Commercial risks</b></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>

**Independence**

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. Employee characteristic – Ralph is not operating independently of the food manufacturing business.

**Independence**

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. Contractor characteristic – Toni is operating her own business independently of the seafood business.

## Cleaning

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

<b>Catherine is an employee</b>	<b>Karl is a contractor</b>
<p>A cleaning business has a contract to clean a small office building. A cleaner, Catherine, who works for the cleaning business, cleans the building.</p>	<p>A cleaner, Karl, has entered into an agreement to clean a small office building for one year.</p>
<p><b>Control over the work</b></p> <p>Catherine is required to:</p> <ul style="list-style-type: none"> <li>• clean the building each weeknight from 6.30pm – 10.30pm</li> <li>• carry out the cleaning work as instructed by the business.</li> </ul> <p>The cleaning business does regular checks to ensure Catherine's work is meeting the required standards. Employee characteristic – the cleaning business has control over the work.</p>	<p><b>Control over the work</b></p> <p>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. Contractor characteristic – Karl has freedom in the way the work is done, subject to the specific terms in the agreement.</p>



<p><b>Ability to subcontract/delegate</b></p> <p>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><b>Ability to subcontract/delegate</b></p> <p>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><b>Basis of payment</b></p> <p>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><b>Basis of payment</b></p> <p>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><b>Equipment, tools and other assets</b></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><b>Equipment, tools and other assets</b></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><b>Commercial risks</b></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><b>Commercial risks</b></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><b>Independence</b></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><b>Independence</b></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>
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## Information technology

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

<b>Ahn is an employee</b>	<b>Sara is a contractor</b>
<p>A software engineer, Ahn, works for a large business. He designs, develops, tests and installs software programs.</p>	<p>A software engineer, Sara, enters into a contract with a retail business to design, develop, test and install a new software program.</p>
<p><b>Control over the work</b></p> <p>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><b>Control over the work</b></p> <p>The contract states the new software program needs to:</p> <ul style="list-style-type: none"> <li>• be operational within six months</li> <li>• complete specific software releases by set dates</li> <li>• meet the retail business's requirements and specifications.</li> </ul> <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><b>Ability to subcontract/delegate</b></p> <p>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><b>Ability to subcontract/delegate</b></p> <p>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><b>Basis of payment</b></p> <p>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 works plus any agreed overtime.</p> <p>Employee characteristic – Ahn is paid for the time worked.</p>	<p><b>Basis of payment</b></p> <p>Sara quoted a price to design, develop, test and install the new software program. Sara will be paid progress payments upon specific 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><b>Equipment, tools and other assets</b></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><b>Equipment, tools and other assets</b></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><b>Commercial risks</b></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><b>Commercial risks</b></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><b>Independence</b></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><b>Independence</b></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.**

<b>Darren is an employee</b>	<b>Sam is a contractor</b>
A concreter, Darren, works for a local residential business. He pours concrete at new developments on behalf of the company.	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><b>Control over the work</b></p> <p>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><b>Control over the work</b></p> <p>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><b>Ability to subcontract/delegate</b></p> <p>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><b>Ability to subcontract/delegate</b></p> <p>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><b>Basis of payment</b></p> <p>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><b>Basis of payment</b></p> <p>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><b>Equipment, tools and other assets</b></p> <p>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><b>Equipment, tools and other assets</b></p> <p>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><b>Commercial risks</b></p> <p>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><b>Commercial risks</b></p> <p>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><b>Independence</b></p> <p>Darren 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 – Darren is not operating independently of the business.</p>	<p><b>Independence</b></p> <p>Sam does concrete work for a number of businesses that require knowledge of a 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.</p> <p>Contractor characteristic – Sam is operating his own business independently of the business that engaged him.</p>

### See also:

- [How to work it out: employee or contractor \(/business/employee-or-contractor/how-to-work-it-out--employee-or-contractor/\)](#).

## Employees treated as contractors

- <https://www.ato.gov.au/Business/Employee-or-contractor/Employees-treated-as-contractors/> (<https://www.ato.gov.au/Business/Employee-or-contractor/Employees-treated-as-contractors/>).
- Last modified: 06 Jan 2017
- QC 33198

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

- not meeting their tax and super obligations
- denying workers their employee entitlements
- illegally reducing their labour costs and gaining an unfair advantage over their competitors.

### Find out about:

- [Penalties and charges](#)
- [How to report a business](#)
- [What to do if a worker wants to be a contractor \(/business/employee-or-contractor/employees-treated-as-contractors/what-to-do-if-a-worker-wants-to-be-a-contractor/\)](#)

## Penalties and charges

They risk 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, made up of 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%.

## How to report a business

Businesses that incorrectly treat employees as contractors can often undercut their competitors and obtain an unfair competitive advantage. These businesses illegally lower their labour costs by not meeting all their tax, super and other government obligations for their workers.

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

You can report a business that is incorrectly treating an employee as a contractor through our [Tax Evasion Reporting Centre \(/general/gen/report-a-concern/\)](#).

You don't have to provide your name. However, if you do give your name and a contact number, we can ask you for more information later if necessary.

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

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- <https://www.ato.gov.au/Business/Employee-or-contractor/Employees-treated-as-contractors/What-to-do-if-a-worker-wants-to-be-a-contractor/>  
(<https://www.ato.gov.au/Business/Employee-or-contractor/Employees-treated-as-contractors/What-to-do-if-a-worker-wants-to-be-a-contractor/>).
- Last modified: 06 Jan 2017
- QC 26276

Sometimes a worker may ask to be engaged as a contractor.

If you think the working relationship is employment, you should check the arrangement using our [Employee/contractor decision tool \(/calculators-and-tools/employee-or-contractor/\)](/calculators-and-tools/employee-or-contractor/).

## 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. Use our [Employee/contractor decision tool \(/calculators-and-tools/employee-or-contractor/\)](/calculators-and-tools/employee-or-contractor/) and show the worker the result.

## 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

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- <https://www.ato.gov.au/Business/Employee-or-contractor/Your-tax-and-super-obligations/> (<https://www.ato.gov.au/Business/Employee-or-contractor/Your-tax-and-super-obligations/>).
- Last modified: 06 Jan 2017
- QC 33192

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

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

## Myths and facts

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- <https://www.ato.gov.au/Business/Employee-or-contractor/Myths-and-facts/>  
(<https://www.ato.gov.au/Business/Employee-or-contractor/Myths-and-facts/>).
- Last modified: 06 Jan 2017
- QC 33185

When working out whether your worker is an employee or contractor, don't get caught out by the common myths.

Duration 1:40

### Find out about:

- [having an ABN](#)
- [common industry practice](#)
- [short-term work](#)
- [80% rule](#)
- [past use of contractors](#)
- [registered business name](#)
- [contracting on different jobs](#)
- [paying super](#)
- [specialist skills or qualifications](#)
- [worker wants to be a contractor](#)
- [using invoices](#)
- [contracts](#)

**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.

**See also:**

- [How to work it out: employee or contractor \(/business/employee-or-contractor/how-to-work-it-out--employee-or-contractor/\)](/business/employee-or-contractor/how-to-work-it-out--employee-or-contractor/).

## **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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