



Do you know the difference between a contractor and an employee in your Australian Small Business?

In the eyes of the Australian Taxation Office (ATO) there is a difference between contractor and employees which impacts the superannuation and taxation obligations you'll need to be aware of if you run a small business in Australia. This could result in your ability to meet your tax and super obligations to the ATO and can mean that your employees are missing out on their entitlements. If you misclassify your works – you could be caught with penalties and charges.

What is the difference between a contractor and an employee?

An employee works in your business and is part of your business. A contractor is running their own business.

To understand the difference, you must look at the whole working arrangement, including:

- Do you pay someone else to do the job?
- Do you pay your worker an agreed quote they provided?
- Do you expect your worker to provide their own tools and equipment to do the job?
- Is the worker legally responsible for their work and liable for fixing mistakes or defects?
- Does your worker decide how they will do the job?
- Is the work subject to specific terms or agreements in a contract?
- Does your worker operate their own business independently of your needs?

Apprentices, trainees, labourers or trades assistants

Apprentices, trainees, labourers or trades assistants are always employees, never contractors. If you previously hired a worker without checking, you can review your decision now to make sure you got it right.

An apprentice or trainee is recognised as getting a qualification or certificate or diploma. They are full-time, part-time or school-based and have a formal training agreement with the business they work for. They are registered through a state or territory, training authority or relevant law and are paid under an award. You must meet the same tax and super obligations as you do for any other employees of your business.

Six Factors

There are six factors that, taken together, help to determine if a worker is an employee or a contractor.

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Employee	Contractor
Ability to subcontract/delegate: the worker can't subcontract/delegate the work or pay someone else to do the work.	Ability to subcontract/delegate: the worker can subcontract/delegate the work and pay someone else to do the work.
Basis of payment: the worker is paid either for the time worked, a fixed price or commission.	Basis of payment: the worker is paid for their result based on a quote they provided.
Equipment, tools and other assets: <ul style="list-style-type: none">• your business provides the tools required to complete the work, or• the worker provides all or most of the tools 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 of the tools required to complete the work• the worker does not receive an allowance or reimbursement for the cost of this equipment, tools and other assets.
Commercial risks: the worker takes no commercial risks. Your business is legally responsible for the work and is liable for the cost of any mistakes.	Commercial risks: the worker takes commercial risks, with the worker being legally responsible for their work and is liable for the cost of any mistakes.
Control over the work: your business tells the worker how the work is to be completed.	Control over the work: your business does not tell the worker how the work is to be completed.
Independence: the worker is considered part of your business.	Independence: the worker is operating their own business independently of your business.

Companies, trusts and partnerships

Companies, trusts and partnerships are considered to be a contracting relationship for tax and super purposes.

Labour hire or on-hire arrangements

Workers hired through a labour hire or on-hire firm and you pay that firm for the work undertaken is considered to be a contractual relationship. The labour firm is responsible for the PAYG withholding, super and FBT obligations of the worker.

Hiring individuals

If your business hires an individual, the details of the agreement determines if they are a contractor or employee. This can be written or verbal.

Do you need help determining your tax and super obligations for the workers your hire? ITP The Income Tax Professionals have been helping Australian small business for 50 years. Speak with a Professional today.

ITP The Income Tax Professionals are more than tax agents. They have been helping Australian individuals and businesses with their business accounting and advice for 50 years and offer a wealth of knowledge. Speak to a Professional today and see how your business can be more profitable.



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