

EMPLOYEE OR CONTRACTOR?

EMPLOYEE OR CONTRACTOR – WHY DOES IT MATTER?

There are many differences between the two when it comes to rights, obligations and the applicability of legislation (tax, superannuation, workers' compensation and leave, for example), and it's important consider and understand the distinctions.

While each set of circumstances needs to be considered on its merits, there are fortunately a number of principles that, taken together, help to inform the decision. These are summarized below:



EMPLOYEES



CONTRACTORS

An employee cannot subcontract or pay someone else to do the work



A contractor may subcontract or pay someone else to do the work

ABILITY TO SUBCONTRACT/ DELEGATE

Payment is based on time worked, price per item/ activity and/or commission



Payment is generally based on results and preceded by a quote

BASIS OF PAYMENT

The business will generally provide all that is needed to complete the job, or will reimburse expenses or provide the employee with an allowance



The contractor will generally provide the equipment, tools etc... to complete the job

EQUIPMENT, TOOLS ETC..

The business is responsible for work done by the employee and covers associated risks



Contractors are responsible for their own work and associated risks. They generally need to meet the costs of rectifying mistakes/omissions

COMMERCIAL RISKS

The business can provide specific direction as to how the work is to be done



Contractors generally have more freedom/ independence in deciding how the work will be done

CONTROL OVER WORK

Employees operate as part of the business and are subject to direction of representatives of the business



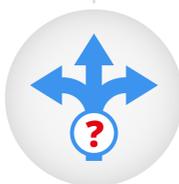
While they need to meet the obligations of any relevant contracts/ agreements, contractors operate independently of the business and are free to, for example, decline work

INDEPENDENCE

If the circumstances relating to the above are not conclusive, other factors including the following may also come into consideration:

Who makes decisions as to when and where the work will be performed?

What arrangements are in place for taxation, superannuation and insurance?



Is the agreement for work to be performed with an individual, or a company within which the individual is employed?

To what extent is there evidence that the individual doing the work is running an independent business (are they working with others, seeking to work with others, do they have an office/ signage/business cards for example?)

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