

Independent contractors

Independent contractors provide agreed services under a contract for those services. They usually negotiate their own fees and working arrangements and can work for more than one client at a time. Independent contractors are often called contractors or subcontractors.

Whether a worker is a contractor or an employee is determined by the nature of the relationship, not what the arrangement is called.

Where to get information and help

The Fair Work Ombudsman (us) has information at www.fairwork.gov.au about:

- [employee entitlements](#), including [pay](#), [leave](#) and [ending employment](#)
- adverse action, coercion and abuses of freedom of association, which can apply to employees and contractors - see [protections at work](#) for more information
- [sham contracting](#).

Contractors can also get information from:

- the [Australian Tax Office \(ATO\)](#) for tax and superannuation at www.ato.gov.au
- www.business.gov.au/people/contractors on the [laws affecting contractors](#).

For support resolving a dispute, contact the [Australian Small Business and Family Enterprise Ombudsman \(ASBFEO\)](#) who can assist on issues such as recovering unpaid invoices at www.asbfeo.gov.au/disputesupport

The difference between contractors and employees

Independent contractors have different rights and obligations to employees. This is because they provide services to another person or business, as opposed to being employed by that person or business. This means it's important to understand the difference between the two.

As a rule, for an employment relationship to exist, a minimum level of mutual obligation is required. In other words, there is an obligation for one person to perform work (the employee) and for the other person to pay for that work (the employer). Courts look at the whole relationship between the parties when determining if a person is an employee or an independent contractor.

Below are some of the common indicators and general examples which, when considered together, can help tell the difference between an employee and an independent contractor.

You need to consider all these indicators when working out whether you're an employee or an independent contractor. There usually won't be one deciding indicator. For example, just because you have an ABN or issue invoices doesn't automatically make you an independent contractor.

A person won't automatically be an employee or an independent contractor because of the type of work they do. A person may perform the same type of work as an employee of a business but may still be an independent contractor. This means that whether someone is an employee or an independent contractor will depend on the individual circumstances.

Indicator	Employee	Independent Contractor
Intention of the parties	The parties' intention is to create an employment relationship. This intention could be shown by the worker providing a tax file number (TFN) and signing an employment contract.	The parties' intention is for the worker to be engaged as an independent contractor. This intention could be shown by the worker providing an Australian business number (ABN) and signing an independent contractor agreement.

	<p>For example, the worker responds to a job ad for a casual cleaner. The worker attends a job interview and is given an offer letter. The worker is also required to complete onboarding paperwork including a TFN declaration form, employment contract and superannuation form.</p>	<p>For example, a worker responds to an ad seeking cleaning services. The worker negotiates the terms of an independent contractor agreement, and invoices (which include the worker's ABN) are issued by the worker for cleaning services provided.</p>
Able to delegate or subcontract work	<p>Is required to complete the work themselves.</p> <p>For example, they can't ask someone else to go to their workplace and do their work for them.</p>	<p>Can delegate or subcontract the services to be performed to another person or business.</p>
Amount of control over how work is performed	<p>Performs work under the direction and control of their employer on an ongoing basis. Work is controlled by the employer including hours, work location and how work is done.</p> <p>For example, a shop assistant who is required to follow their manager's instructions about how to serve customers, display clothes and when to tidy the change rooms.</p> <p>For example, a gardener who attends sites at the times directed by their boss and is told to mow the lawns in a particular way.</p>	<p>Has a high level of control over the work they perform, their hours, work location and how they do the work.</p> <p>For example, a tailor who collects garments from clothing stores for alterations when it suits their schedule, makes alterations in the way they choose and works from their own premises.</p> <p>For example, a gardener who chooses their preferred suppliers and decides how and when to provide the landscaping services.</p>
Financial responsibility and risk	<p>Bears no financial risk (as this is the responsibility of their employer).</p> <p>For example, a baker who gets paid their regular daily wage even if the bakery doesn't make a profit for that day. The employer bears the loss of the unsold baked goods.</p> <p>For example, a painter who spends a day painting a house, but still gets paid by the employer for the work performed, even if the homeowner has not yet paid the employer.</p>	<p>Bears the risk for making a profit or loss on each task. Usually is personally responsible and liable for poor work or any injury sustained while performing the task. As such, contractors generally have their own insurance policy.</p> <p>For example, a baker who supplies various baked goods to cafes but burns their croissants one day and can't charge the cafes for the burnt croissants.</p> <p>For example, a painter who paints a house in the wrong colour and doesn't get paid by the client for the time and money spent.</p>
Tools and equipment	<p>Tools and equipment are generally provided by the employer, or a tool allowance is provided.</p> <p>For example, an office worker who has their computer provided for them.</p> <p>For example, a cleaner who uses cleaning supplies provided by the employer.</p>	<p>Uses their own tools and equipment (note: alternative arrangements may be made within a contract for services).</p> <p>For example, an auditor who brings their own computer to do their work.</p>
Hours of work	<p>Generally, works standard or set hours (unless they're a casual employee, in which case their hours may vary from week to week).</p>	<p>By agreement between both parties, decides what hours to work to complete the specific task.</p>

	For example , a person who works regular 5 hour shifts twice a week at a petrol station.	For example , a graphic designer who negotiates the cost of creating a logo based on how long it will take and decides when they will do the work.
Expectation of work continuing	Usually has an ongoing expectation of work (note: some employees may be engaged for a specific task or specific period or on a casual basis). For example , a worker in a pet shop who works on a part-time basis, 4 times a week on an ongoing basis.	Usually engaged for a specific task. For example , a removalist who does a one-off house move for a customer.
Tax	Income tax is deducted by their employer.	Pays their own tax and GST (if applicable) to the Australian Taxation Office.
Superannuation	Entitled to have superannuation contributions paid into a nominated superannuation fund by their employer.	Pays their own superannuation (note: in some circumstances independent contractors may be entitled to be paid superannuation contributions).
Leave	Entitled to receive paid leave (for example, annual leave, personal/carers' leave, long service leave) or receive a loading in lieu of leave entitlements in the case of casual employees.	Doesn't receive paid leave.

Example: Cleaning employee misclassified as a contractor

Peter has worked for AAA Mops for 7 months. He's required to work three shifts a week and his pay rates come from the Cleaning Award. When Peter is working, he wears a shirt with the 'AAA Mops' logo. Peter keeps a record of his start and finish times and fills out a timesheet at the end of each shift.

Peter's boss, Alfred, gives him all the cleaning supplies he needs and tells him exactly how the cleaning should be done. Alfred pays Peter's tax, insurance and superannuation contributions.

Peter hasn't been paid for the 60 hours he worked last month.

Peter looks at the FWO website and notices that most indicators point towards him being an employee. He uses the FWO's Pay Calculator to calculate how much he is owed and prints off the result to show to Alfred. It's easy to do because he's kept a record of the hours he's worked.

Peter isn't sure how to raise the issue with Alfred, so he completes the FWO's difficult conversations in the workplace online course.

Peter arranges a meeting with Alfred to discuss the issue. Alfred apologises and pays Peter what he's owed.

Example: Independent contractor in the gig economy not entitled to sick leave

Gab uses her bike to deliver flowers for a company called Super Sunflower Deliveries. She has her own ABN and works for 2 other flower delivery companies. Sometimes she gets work from multiple delivery apps on the same day.

Gab uses the Super Sunflower Deliveries app to choose which deliveries she wants to make and when she wants to make them. Some weeks she makes 2 deliveries a week, other weeks she makes 10. The Super Sunflower Deliveries app keeps a record of the deliveries she makes and pays her after every delivery.

When she's riding for Super Sunflower Deliveries, Gab wears her own clothes and doesn't have a uniform. If she gets busy, she can get her sister to make a delivery for her.

One day, Gab twists her ankle playing netball. Her doctor tells her she can't ride a bike for 2

weeks. A friend tells her she could be entitled to sick leave.

Gab looks at our website, www.fairwork.gov.au, and notices most indicators point towards her being an independent contractor, not an employee. This is because she has control over the hours she works and can work for different flower delivery companies. She uses her own bike to make deliveries and can subcontract the deliveries to her sister.

As an independent contractor, Gab isn't entitled to sick leave. This is because independent contractors aren't covered by the National Employment Standards.

Gab decides to take out insurance to cover her if she loses income because of illness or injury again. Now that she understands she's a contractor, she also looks into other financial arrangements, including paying her own superannuation and tax.

What to do next if you need help

For help working out whether you are [an employee or an independent contractor](#) you can visit www.business.gov.au/people/contractors or seek independent legal advice.

If you think you might be incorrectly engaged as an independent contractor, we [can help with resolving workplace problems](#).

Sham contracting

Sometimes a business (or individual) may tell a worker that they are an independent contractor, when in fact they are an employee of the business. If the business knew (or was reckless as to whether) the worker was an employee, there may be a sham contracting arrangement.

A sham contracting arrangement may exist even if the worker is treated like an independent contractor in some ways (for example, the worker may be required to have an ABN and submit invoices like a genuine independent contractor would).

Sham contracting is illegal. It's illegal to:

- tell an employee they are an independent contractor

- say something false to convince an employee to do the same work for the employer but as an independent contractor
- dismiss or threaten to dismiss an employee if they don't become an independent contractor, or
- dismiss an employee and hire them as an independent contractor to do the same work.

Sham contracting can be done knowingly or recklessly by an employer. These types of arrangements are sometimes set up by employers who are trying to avoid responsibility for paying legal entitlements to employees.

Penalties for sham contracting can be imposed by the courts. The maximum penalty is \$13,320 for individuals and \$66,600 for corporations, per contravention.

Example: Sham contracting in the security industry

Before Elijah started working for Base2Base Security, he was told he'd be an independent contractor and needed an ABN to get the job. Base2Base Security told him to arrange his own tax and superannuation because it would save them money so Base2Base Security could pay him a higher hourly rate.

Elijah invoices Base2Base Security monthly using his ABN. He wants to work for another security company as well, but Base2Base Security won't let him. They want to make sure he's available whenever they need him to work.

Elijah uses a radio and flashlight provided by the company during his shifts and has rostered hours, which he is required to work each week. A manager from Base2Base Security also supervises Elijah's work and tells him if there are any areas that he needs to improve on, such as paying more attention to the CCTV system.

Last month Base2Base Security told Elijah they lost a large security contract and they no longer require his services. The company hasn't paid Elijah's last invoice. Another security

guard tells him to go to our website, www.fairwork.gov.au, for help.

Elijah visits our website and notices that most indicators point towards him being an employee. This is because Elijah:

- needs to work set hours determined by Base2Base Security
- can't work for anyone else
- is provided with equipment to do the job
- is supervised by Base2Base Security.

Elijah follows our guide to resolving workplace issues to try and sort out the issue with Base2Base Security himself. He is unable to come to an agreement with Base2Base so Elijah lodges an online enquiry on our website.

A FWO adviser replies to Elijah the same day. The FWO adviser says it sounds like Base2Base Security might have misrepresented the employment relationship as a contracting one and requests that Elijah provide more information and evidence.

We intervene and Base2Base Security pays Elijah the money he's owed. We investigate further and find evidence that Base2Base Security knowingly misrepresented to several employees, including Elijah, that they were independent contractors. The evidence showed they did this to avoid paying people superannuation and penalty rates under the Security Award. We take Base2Base Security to court. The court imposes a pecuniary penalty on Base2Base Security for contravening sham contracting laws.

What to do next if you need help

We can help employees who think they're in a sham contracting arrangement. If you think that you might be in a sham contracting arrangement follow the steps below to resolve workplace problems.

Resolving workplace problems

If you think you've been incorrectly engaged as an independent contractor, or you might be in a sham

contracting arrangement, you should take the following steps:

1. Use the table of indicators above to carry out an assessment of your situation.
2. If the indicators lean towards you being an employee, raise the matter directly with the business to try to resolve the issue:
 - Use our step-by-step guide to [try to resolve the issue yourself](#) at www.fairwork.gov.au/help
 - Our free [online learning course](#) will give you tips and resources to help you talk to the business about your working arrangement at www.fairwork.gov.au/learning
3. If you're unable to reach an agreement and you still suspect you're incorrectly engaged as an independent contractor, you can [ask for our help with a workplace problem](#) by:
 - making an [online enquiry](#) through My account at www.fairwork.gov.au, or
 - call us on 13 13 94.
4. We may ask for evidence and take further steps to understand the nature of the working relationship to resolve the matter.

Getting paid

Since independent contractors aren't employees, they don't have a minimum wage or pay rate. Instead, independent contractors usually negotiate payment as part of their contract for the services they provide.

An independent contractor will submit an invoice when they need to be paid. They can be paid on a regular basis or at the end of the contract or project.

If an independent contractor doesn't get paid for an invoice, they can take their own legal action or seek independent legal advice. We can't enforce payment of unpaid invoices.

Tax and super

Since independent contractors provide services to another person, they need to pay their own income tax on money they earn (to comply with tax laws) and may need to pay GST. For more information on tax visit the [Australian Taxation Office](http://www.ato.gov.au) at www.ato.gov.au

As well as paying their own tax, independent contractors may need to make their own superannuation contributions. There are exceptions to this, such as when a contractor is hired wholly or principally for labour. In this case, the person that hired them is responsible for paying their superannuation. For more information on when superannuation is paid by the contractor or the hirer visit the [Australian Taxation Office](http://www.ato.gov.au) at www.ato.gov.au

Minimum entitlements

Independent contractors don't get other entitlements that employees get such as leave and notice of termination unless they negotiate for these entitlements to be included in their contract.

Independent contracting laws

The Fair Work Act 2009 protects independent contractors from adverse action, coercion and abuses

of freedom of association. See [Protections at work](#) for more information at www.fairwork.gov.au/protections

The [Independent Contractors Act 2006](#) at www.comlaw.gov.au/Series/C2006A00162 sets up a national unfair contracts remedy scheme for independent contractors where they can ask a court to set aside a contract if it is harsh or unfair.

More information

You can also find out more about [independent contractors](#) by visiting www.business.gov.au/people/contractors or contact business.gov.au on 13 28 46.

For independent contractors who want to employ someone, make sure you check the [Hiring employees](#) page at www.fairwork.gov.au/hiring

For small business workplace responsibilities, go to the [Small business](#) page at www.fairwork.gov.au/smallbusiness

For information, tools and tips about managing labour contracting, go to [Contracting labour and supply chains](#) at www.fairwork.gov.au/find-help-for/contracting-labour-and-supply-chains

CONTACT US

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: **13 13 94**

Need language help?

Contact the Translating and Interpreting Service (TIS) on **13 14 50**

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: **13 36 77**. Ask for the Fair Work Infoline **13 13 94**

Speak & Listen: **1300 555 727**. Ask for the Fair Work Infoline **13 13 94**

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this fact sheet is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

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