



## Independent contractors and employees

### Who is an employee? Who is an independent contractor?

The *Independent Contractors Act 2006* (IC Act) and the *Fair Work Act 2009* (FW Act) protects the rights and entitlements of independent contractors.

The difference between an employee and independent contractor is based on many different factors. No single factor

determines whether a person is an employee or contractor. Instead, courts will look at each case and make a decision based on the totality of the relationship between the parties when determining the status of a person's employment.

There are some common factors that may contribute to determining whether a person is an employee or independent contractor:

| Indicator                                    | Employee  | Independent Contractor   |
|--|---|--|
| Degree of control over how work is performed | Performs work, under the direction and control of their employer, on an ongoing basis   | Has a high level of control in how the work is done  |
| Hours of work                                | Generally works standard or set hours (note: a casual employee's hours may vary from week to week).   | Under agreement, decides what hours to work to complete the specific task.   |
| Expectation of work                          | Usually has an ongoing expectation of work (note: some employees may be engaged for a specific task or specific period).  | Usually engaged for a specific task.   |
| Risk   | Bears no financial risk (this is the responsibility of their employer).   | Bears the risk for making a profit or loss on each task. Usually bears responsibility and liability for poor work or injury sustained while performing the task. As such, contractors generally have their own insurance policy. |
| 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).   |
| Tools and equipment                          | Tools and equipment are generally provided by the employer, or a tool allowance is provided.  | Uses their own tools and equipment (note: alternative arrangements may be made within a contract for services).  |
| Tax  | Has income tax deducted by their employer.  | Pays their own tax and GST to the Australian Taxation Office.  |
| Method of payment                            | Paid regularly (for example, weekly/fortnightly/monthly).   | Has obtained an ABN and submits an invoice for work completed or is paid at the end of the contract or project.  |
| Leave  | Entitled to receive paid leave (for example, annual leave, personal/carer's' leave, long service leave) or receive a loading in lieu of leave entitlements in the case of casual employees. | Does not receive paid leave.   |

## Sham contracting arrangements

A sham contracting arrangement is when an employer attempts to disguise an employment relationship as an independent contracting arrangement. This is usually done to avoid responsibility for employee entitlements. Under the sham contracting provisions of the FW Act, an employer cannot:

- misrepresent an employment relationship or a proposed employment arrangement as an independent contracting arrangement
- dismiss or threaten to dismiss an employee for the purpose of engaging them as an independent contractor
- make a knowingly false statement to persuade or influence an employee to become an independent contractor.

The FW Act provides serious penalties for contraventions of these provisions. Employees and independent contractors can request assistance from the FWO if they feel their rights have been contravened.

## Penalties

Fair Work Inspectors can seek the imposition of penalties for contraventions of sham contracting arrangements.

They may also apply to the courts to grant an injunction or an interim injunction if an employer seeks (or threatens) to dismiss an employee for the purpose of engaging them as an independent contractor. The purpose of the injunction would be to prevent the dismissal from occurring, or otherwise remedy the effects. Courts can also make other orders to have the employee reinstated or compensated.

## General protections

Some general protections provided under the FW Act extend to independent contractors and their principals.

Independent contractors and principals are afforded limited workplace rights, and the right to engage in certain industrial activities. An independent contractor or principal is protected from adverse action by any person in relation to the decision to exercise or potentially exercise their rights under these provisions.

For more information on workplace rights, industrial activities, and what constitutes adverse action, please see the [Protections at work fact sheet](#).

### Contact us

Fair Work Online: [www.fairwork.gov.au](http://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**