

Independent contractors

Independent contractors run their own business. 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 (subbies).

Whether or not a worker is a contractor or an employee is not based on what the arrangement is called, but on the nature of the relationship.

On this page, you'll find information about:

- [where to get information and help](#)
- [the difference between contractors and employees](#)
- [sham contracting](#)
- [getting paid](#)
- [independent contracting laws](#).

Where to get information and help

You can speak with us for information on:

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

If you're a contractor you can also get information from:

- the Australian Tax Office (ATO) [☞ \(https://www.ato.gov.au/individuals/working/working-as-a-contractor/\)](https://www.ato.gov.au/individuals/working/working-as-a-contractor/) for [tax ☞ \(https://www.ato.gov.au/Business/Starting-your-own-business/Supporting-your-small-business/\)](https://www.ato.gov.au/Business/Starting-your-own-business/Supporting-your-small-business/) and [superannuation ☞ \(https://www.ato.gov.au/Individuals/Super/Getting-your-super-started/Contractors/\)](https://www.ato.gov.au/Individuals/Super/Getting-your-super-started/Contractors/) , including how these relate to sham contracting
- [business.gov.au ☞ \(https://www.business.gov.au/people/contractors\)](http://business.gov.au) on the laws affecting contractors.

If you need support to resolve a dispute, contact the [Australian Small Business and Family Enterprise Ombudsman \(ASBFEO\) ☞ \(https://www.asbfeo.gov.au/disputesupport\)](https://www.asbfeo.gov.au/disputesupport) who can assist on issues such as recovering unpaid invoices.

The difference between contractors and employees

Independent contractors have different obligations and rights to employees because they are running their own business. This means it's important to understand the difference between the two.

There are a number of things that can help you tell the difference between an employee and a contractor. There isn't one that makes a difference on its own – you need to consider everything together.

Employees

The factors that are indicative of an employee are that they:

- have their work directed and controlled by their employer
- work set or standard hours (casual employees hours can vary from week to week)
- usually have an ongoing expectation of work
- bear no financial risk – it's covered by their employer's insurance
- are provided by their employer with tools or a tool allowance is provided
- have income tax deducted by their employer
- are paid wages or a salary regularly
- are entitled to paid leave.

Independent contractors

The factors that are indicative of independent contractors are that they:

- have a high level of control over how the work is done, including the choice to hire others to assist
- agree to the hours required to complete the job
- usually engaged for a specific task or time
- bear the risk of making a profit or a loss and usually bears responsibility and liability for poor work or injury and usually have their own insurance
- use their own tools and equipment
- pay their own tax and GST
- have an ABN and submits invoices
- don't receive paid leave.

You need to consider all of these factors when working out whether you are an employee or an independent contractor. There won't be one thing on its own that decides whether you are an employee or an independent contractor. Just because you have an ABN or issue invoices doesn't automatically make you an independent contractor.

Independent contractors can also do the same type of work as an employee of the business they are doing work for and still be an independent contractor. A person won't automatically be an employee or an independent contractor because of the type of work they do.

For more information on the differences between employees and independent contractors you can read the [Independent contractors and employees fact sheet \(www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/independent-contractors-and-employees\)](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/independent-contractors-and-employees) .

For help in deciding whether you are an employee or an independent contractor you can visit [business.gov.au – contractors](http://business.gov.au) [☞] (<https://www.business.gov.au/people/contractors>) or seek independent legal advice.

Sham contracting

Sham contracting is where a person working as an employee is told they are an independent contractor when they're not. They will also be treated like an independent contractor in some ways, for example they may be required to have an ABN and submit invoices.

Sham contracting is illegal. It's illegal to:

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

Sham contracting can be done intentionally or carelessly by an employer. These types of arrangements are sometime set up by employers who are seeking to avoid responsibility for paying legal entitlements to employees.

We can help employees who think they have a sham contracting arrangement. If you think that you might be in a sham contracting arrangement go to [Help resolving workplace issues \(www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/default\)](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues/default) .

Getting paid

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

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 for help. We can't enforce payment of unpaid invoices.

Tax and super

Since independent contractors are running a business, they will need to arrange for tax to be taken out of their pay and pay GST. For more information on tax visit the [Australian Taxation Office](http://www.ato.gov.au) [☞] (<http://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, they're considered employees for superannuation purposes, and 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/super/) [☞] (<http://www.ato.gov.au/super/>) .

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](http://www.comlaw.gov.au/Series/C2009A00028) [☞] (<http://www.comlaw.gov.au/Series/C2009A00028>) protects independent contractors from adverse action, coercion and abuses of freedom of association. See [Protections at work](http://www.fairwork.gov.au/employee-entitlements/protections-at-work/default) (www.fairwork.gov.au/employee-entitlements/protections-at-work/default) for more information.

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

Further information

You can find out more about independent contractors by visiting www.business.gov.au/people/contractors (<http://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](http://www.fairwork.gov.au/Find-help-for/Small-business/hiring-employees) (www.fairwork.gov.au/Find-help-for/Small-business/hiring-employees) page.

For small business workplace responsibilities, go to the [Small business](http://www.fairwork.gov.au/Find-help-for/Small-business/default) (www.fairwork.gov.au/Find-help-for/Small-business/default) page.

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

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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 advice that you can rely on. The information contained on this website 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 workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.