

I think I could be an employee not a contractor

Sham contracting happens when an employer attempts to disguise an employment relationship as an independent contracting arrangement.

The employee may be treated like an independent contractor, for example the business they are working for asks them to provide an ABN and submit invoices for their work.

Sometimes, an employee can be misclassified as an independent contractor. Check what you can do if you think you're an employee, not a contractor.

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How to check if you're an employee or a contractor

Before you start - information you need

- Information about the difference between [independent contractors and employees \(www.fairwork.gov.au/find-help-for/independent-contractors#difference-between-contractors-and-employees\)](http://www.fairwork.gov.au/find-help-for/independent-contractors#difference-between-contractors-and-employees)
- The [award \(www.fairwork.gov.au/awards-and-agreements/awards/default\)](http://www.fairwork.gov.au/awards-and-agreements/awards/default) , [enterprise agreement or other registered agreement \(www.fairwork.gov.au/awards-and-agreements/agreements/default\)](http://www.fairwork.gov.au/awards-and-agreements/agreements/default) that would apply to you as an employee.
- Copies of your contract or agreement or any other documents or records you have about your work arrangements.

Steps to take

- Work out whether you're an employee or an independent contractor
 - There are a range of factors to consider when working out if someone is an employee or an independent contractor. Visit our [Independent contractors page \(www.fairwork.gov.au/find-help-for/independent-contractors\)](http://www.fairwork.gov.au/find-help-for/independent-contractors) to help you work out the difference between contractors and employees.
 - Working out whether or not someone is an employee or an independent contractor can be a complex legal decision and can have consequences, for example about how much tax you need to pay or how much super you need to get. In some instances, you may want to get legal advice.
 - If you've been engaged as a contractor, but you think your arrangement is actually an employment relationship and you are an employee, follow our next steps.
- Work out what you are owed
 - If you think you're an employee and not a contractor, it can mean you're not getting the correct minimum employment entitlements.
 - Our [Pay and Conditions Tool \(https://calculate.fairwork.gov.au/\)](https://calculate.fairwork.gov.au/) can help you work out the right award and other minimum pay rates you should be paid for the work you've performed.
 - If the business has an [enterprise agreement or another registered agreement \(www.fairwork.gov.au/awards-and-agreements/agreements/default\)](http://www.fairwork.gov.au/awards-and-agreements/agreements/default) in place, the minimum pay rates should be set by the agreement instead of an award. For information about tax requirements and super guarantee contributions, visit the [Australian Taxation Office website \(http://www.ato.gov.au\)](http://www.ato.gov.au).
- Have a meeting with the business you work for
 - Arrange a time to speak with the business about your concerns.
 - To help you get ready for the discussion, we have [online courses \(www.fairwork.gov.au/tools-and-resources/online-learning-centre/default\)](http://www.fairwork.gov.au/tools-and-resources/online-learning-centre/default) to help you prepare for [difficult conversations \(www.fairwork.gov.au/tools-and-resources/online-learning-centre/difficult\)](http://www.fairwork.gov.au/tools-and-resources/online-learning-centre/difficult)

[conversations-in-the-workplace-employee-course](#)).

- In the meeting you can go through our [Independent contractors page \(www.fairwork.gov.au/find-help-for/independent-contractors\)](#) with the business to discuss why you believe you're an employee rather than an independent contractor.
- If you think you're covered by an award, you should also provide the business with information about the award you are covered by, your classification, and how much you are owed. Check [Find my award \(www.fairwork.gov.au/awards-and-agreements/awards/find-my-award\)](#). You can do the same if the business has an [enterprise agreement or another registered agreement \(www.fairwork.gov.au/awards-and-agreements/agreements/default\)](#) in place.
- Your employer may wish to seek further advice to help them make the correct decision and you should give them a reasonable amount of time to do that.
- Make sure you record any outcomes from your discussion.

Example: Contracting by mistake

Brett has been working as a boilermaker for 2 months. When he started work, his boss told him he would be an independent contractor and should get an ABN and invoice them.

In the 2 months since Brett started working his boss has been supplying all the tools required, setting his hours of work and has told Brett that he isn't allowed to work for anyone else or hire anyone else to do his work for him.

Brett looked at the [Independent contractors page \(www.fairwork.gov.au/find-help-for/independent-contractors\)](#) and it appeared to him that he is actually being treated as an employee. He used our [Pay and Conditions Tool \(https://calculate.fairwork.gov.au/\)](#) to work out his minimum pay rate under the Manufacturing Award. He also checked the Fair Work Commission website and found out the business didn't have [an enterprise agreement or another registered agreement \(www.fairwork.gov.au/awards-and-agreements/agreements/default\)](#).

Brett had a meeting with his boss and showed him the information he had found. His boss agreed that he should be an employee and back paid him the wages he was owed. He then provided Brett with an employment agreement and Brett continued working as an employee.

Best practice tip

Before speaking to the business you should work out whether or not you are being underpaid as an employee. In some cases, although a person may have been incorrectly classified as a contractor and sham contracting may be occurring, a person may still be getting paid more than they would be entitled to as an employee. In that case, there may be no back pay applicable.

If you need more support

If you still can't resolve the issue then you can [contact us \(www.fairwork.gov.au/contact-us/default\)](#) for more help.

Determining whether you've been correctly classified as a contractor or an employee and whether there is sham contracting can be complicated. You may want to get independent legal advice if you're having difficulty working out these issues.

Other common workplace problems

- [My pay doesn't seem right \(www.fairwork.gov.au/workplace-problems/common-workplace-problems/my-pay-doesnt-seem-right\)](#)
- [I've been fired and I'm not sure what I'm entitled to \(www.fairwork.gov.au/workplace-problems/common-workplace-problems/ive-been-fired-and-im-not-sure-what-im-entitled-to\)](#)
- [Help with bullying in the workplace \(www.fairwork.gov.au/workplace-problems/common-workplace-problems/help-with-bullying-in-the-workplace\)](#)
- [I'm a migrant worker being treated unfairly \(www.fairwork.gov.au/workplace-problems/common-workplace-problems/im-a-migrant-worker-being-treated-unfairly\)](#)
- [I'm not getting pay slips \(www.fairwork.gov.au/workplace-problems/common-workplace-problems/im-not-getting-pay-slips\)](#)
- [I'm a migrant worker being treated unfairly \(www.fairwork.gov.au/workplace-problems/common-workplace-problems/im-a-migrant-worker-being-treated-unfairly\)](#)

Tools and resources

- [An employee's guide to resolving workplace issues \(DOCX 397.2KB\) \(www.fairwork.gov.au/ArticleDocuments/712/an-employees-guide-to-resolving-workplace-issues.docx.aspx\) \(PDF 570.8KB\) \(www.fairwork.gov.au/ArticleDocuments/712/an-employees-guide-to-resolving-workplace-issues.pdf.aspx\)](#)
- [Log in or register for My account \(www.fairwork.gov.au/my-account/default\)](#)

- [Effective dispute resolution best practice guide \(www.fairwork.gov.au/tools-and-resources/best-practice-guides/effective-dispute-resolution\)](http://www.fairwork.gov.au/tools-and-resources/best-practice-guides/effective-dispute-resolution)
- [Difficult conversations in the workplace - manager course \(www.fairwork.gov.au/tools-and-resources/online-learning-centre/difficult-conversations-in-the-workplace-manager-course\)](http://www.fairwork.gov.au/tools-and-resources/online-learning-centre/difficult-conversations-in-the-workplace-manager-course)
- [Pay and Conditions Tool \(https://calculate.fairwork.gov.au/\)](https://calculate.fairwork.gov.au/)
- [Record My Hours app \(www.fairwork.gov.au/tools-and-resources/record-my-hours-app\)](http://www.fairwork.gov.au/tools-and-resources/record-my-hours-app)

Related information

- [Independent contractors \(www.fairwork.gov.au/find-help-for/independent-contractors\)](http://www.fairwork.gov.au/find-help-for/independent-contractors)
- [Award & agreement free wages and conditions \(www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions\)](http://www.fairwork.gov.au/awards-and-agreements/award-and-agreement-free-wages-and-conditions)
- [Laws affecting contractors \(https://www.business.gov.au/people/contractors\)](https://www.business.gov.au/people/contractors) 
- [Working as a contractor \(ATO\) \(https://www.ato.gov.au/individuals/working/working-as-a-contractor/\)](https://www.ato.gov.au/individuals/working/working-as-a-contractor/) 

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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.