

INDEPENDENT CONTRACTOR VS EMPLOYEE

This fact sheet provides some general guidance on the differences between employees (contract of service) and self-employed independent contractors (contract for services). Whilst there are a number of indicators to help tell the difference between an employee and an independent contractor, unfortunately, there is no one single test which will determine whether a person is either an employee or an independent contractor.

To determine whether a person is an independent contractor or an employee, a court will consider a number of factors which take into account the entire working relationship on balance. Each situation needs to be tested on a case-by-case basis, and in some instances courts have found that people are not employees for some purposes (for example taxation) but are employees for others (for example vicarious liability). For more information, please phone the Workplace Relations Advice Line on 03 8662 5333.

Employees

All employees are entitled to a minimum set of conditions under workplace relations law. Some of these entitlements include payment of wages, hours of work and personal/carer's leave.

A typical indicator that implies an individual is an employee is that the employer will have the right to direct the ways in which the employee works. In addition, the employer has the lawful authority to command the worker. Other indicators that a relationship is one of employer and employee are that an employee:

- > generally works standard or set hours
- > bears no financial risk (this is the responsibility of their employer)
- > is entitled to have superannuation contributions paid into a nominated superannuation fund by their employer
- > has income tax deducted by their employer
- > is paid regularly (e.g. weekly / fortnightly / monthly); and/or
- > is generally entitled to get paid leave (e.g. annual leave, personal / carer's leave, long-service leave) if they are a permanent employee.

Independent contractors

Whilst there is no specified definition in the *Independent Contractors Act 2006*, an independent contractor can be known as a contract for services or a person who agrees to deliver a certain outcome. *The Independent Contractors Act 2006* relies on the common law meaning of independent contractor. The common law is a set of legal principles which have been developed through decisions in the courts.

An independent contractor will typically maintain a high level of flexibility and discretion as to how their work is to be performed. However, the service contract may contain terms which indicate the types of materials to be used and the methods of performance.

Other indicators that imply a relationship is one of company and independent contractor are that an independent contractor will:

- > bear the risk for making a profit or loss on each job
- > generally pay their own superannuation and tax, including GST
- > generally have their own insurance
- > be contracted to work for a set period of time (for example, two months), or to do a set task

- > decide what hours to work to complete the job
- > generally submit an invoice for work completed, or is paid at the end of the contract or project; and/or
- > not get paid leave.

As previously mentioned, to determine whether a person is an independent contractor or an employee, each situation needs to be tested on a case-by-case basis.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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