

Employee or Contractor?

The relationship between a business and its contractors is vastly different from the relationship between an employee and employer. There are various factors that must be taken into account when engaging an independent contractor in order to avoid entering into a sham contract.

The table below provides a guide on the difference between a contractor and employee. This is not an exhaustive list.

Factors	Employee	Contractor
Work Hours	The work hours are clearly defined and the employer has control over rosters etc. Generally the hours would be set or standard.	Has control over when work is performed and schedules his or her own day or hours to complete the task or work required.
Control over work	Does not have much or any control over how work is performed. The employer would normally control or direct the work required to be performed.	Decides how to complete the task or work without explicit direction from the business. Performs the work at his or her own discretion. Direction on how work should be performed may be noted in the contract.
Independence	Dependent on the employer to provide direction and works in accordance with employment contract/agreement	Services performed based on contract agreement, any additional service outside of the agreement must be agreed to. Has the right to accept or reject work. Is free to work for other businesses and generally gets work through marketing activities (advertising, word of mouth etc)

The information provided above is for convenient reference only. This information should not be relied on solely when making a decision as the circumstances surrounding each matter are specific. The information is for general reference only and we advise that you take no action without first seeking advice.

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Place of work	Generally at the employer's premises.	Provides their own assets and may have own office or works at various locations.
Payment / Wages	Paid regularly for work performed or commission. (payment is regular, weekly, fortnightly, monthly). Receives entitlements such as sick leave, annual leave etc.	Submits invoice for work completed or services rendered. Not paid any leave. Is liable for own superannuation and tax payments.
Risks	Bears no liability for the business – employer is liable for business risks including financial risks.	Has own liability & indemnity insurance. Bears the risk of profit or loss incurred in performing the contract or work required. Required to remedy faulty work at own expense.
Ability to delegate or subcontract	Performs the work required personally, generally cannot delegate or subcontract the work required.	Generally has the ability to subcontract or delegate the work to others.
Tools/ Equipment	The employer generally provides tools/equipment. Expenses related to tools/equipment required are reimbursed by employer or paid through allowances.	Provides own tools /equipment. Responsible for own expenses.

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FACT SHEET

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Termination	Employer has right to dismiss (subject to Federal and State laws)	Are engaged for a set work and can only have their contract terminated if contract has been breached or if unable to complete work requested.
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We have presented you with a brief summary to provide some clarity on the difference between an employee (contract of service) and contractor (contract for service).

For advice or enquiries on this or any other workplace matters, contact us on **1300 116 400** or email support@workplacepartners.com.au

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