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## Difference between employees and contractors

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An employee works in your business and is part of your business. A contractor is running their own business.

The table below outlines six of the factors that, taken together, determine whether a worker is an employee or contractor for tax and super purposes. Follow the links in the table for more information about each factor.

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### Employee or contractor

Employee	Contractor
<a href="#">Ability to subcontract/delegate (/business/employee-or-contractor/difference-between-employees-and-contractors/ability-to-subcontract/delegate/)</a> : the worker can't subcontract/delegate the	<a href="#">Ability to subcontract/delegate (/business/employee-or-contractor/difference-between-employees-and-contractors/ability-to-subcontract/delegate/)</a> : the worker can subcontract/delegate the

work – they can't pay someone else to do the work.

work – they can pay someone else to do the work.

Basis of payment  
(/business/employee-or-contractor/difference-between-employees-and-contractors/basis-of-payment/): the worker is paid either:

- for the time worked
- a price per item or activity
- a commission.

Basis of payment  
(/business/employee-or-contractor/difference-between-employees-and-contractors/basis-of-payment/): the worker is paid for a result achieved based on the quote they provided.  
A quote can be calculated using hourly rates or price per item to work out the total cost of the work.

Equipment, tools and other assets  
(/business/employee-or-contractor/difference-between-employees-and-contractors/equipment,-tools-and-other-assets/):

- your business provides all or most of the equipment, tools and other assets required to complete the work, or
- the worker provides all or most of the equipment, tools and other assets required to complete the work, but your business provides them with an allowance or reimburses them for the cost of the

Equipment, tools and other assets  
(/business/employee-or-contractor/difference-between-employees-and-contractors/equipment,-tools-and-other-assets/):

- the worker provides all or most of the equipment, tools and other assets required to complete the work
- the worker does not receive an allowance or reimbursement for the cost of this equipment, tools and other assets.

equipment, tools and other assets.

Commercial risks  
(/business/employee-or-contractor/difference-between-employees-and-contractors/commercial-risks/): the worker takes no commercial risks. Your business is legally responsible for the work done by the worker and liable for the cost of rectifying any defect in the work.

Commercial risks  
(/business/employee-or-contractor/difference-between-employees-and-contractors/commercial-risks/): the worker takes commercial risks, with the worker being legally responsible for their work and liable for the cost of rectifying any defect in their work.

Control over the work  
(/business/employee-or-contractor/difference-between-employees-and-contractors/control-over-work/): your business has the right to direct the way in which the worker does their work.

Control over the work  
(/business/employee-or-contractor/difference-between-employees-and-contractors/control-over-work/): the worker has freedom in the way the work is done, subject to the specific terms in any contract or agreement.

Independence  
(/business/employee-or-contractor/difference-between-employees-and-contractors/independence/): the worker is not operating independently of your business. They work within and are considered part of your business.

Independence  
(/business/employee-or-contractor/difference-between-employees-and-contractors/independence/): the worker is operating their own business independently of your business. The worker performs services as specified in their contract or



Fair Work  
OMBUDSMAN

## Independent contractors

Independent contractors provide agreed services under a contract for those services. 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.

Whether a worker is a contractor or an employee is determined by the nature of the relationship, not what the arrangement is called.

### On this page:

- [Where to get information and help](#)
- [The difference between contractors and employees](#)
- [Sham contracting](#)
- [Getting paid](#)
- [Independent contracting laws](#)
- [More information.](#)

Read below for more information or download the fact sheet.

### Where to get information and help

The Fair Work Ombudsman (us) has information about:

- [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.](#)

Contractors 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/)
- [business.gov.au 🔗 \(https://www.business.gov.au/people/contractors\)](https://www.business.gov.au/people/contractors) on the laws affecting contractors.

For support resolving a dispute, contact the [Australian Small Business and Family Enterprise Ombudsman \(ASBFE0\) 🔗 \(https://www.asbfeo.gov.au/disputesupport\)](https://www.asbfeo.gov.au/disputesupport) who can assist on issues such as recovering unpaid invoices.

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### The difference between contractors and employees

Independent contractors have different rights and obligations to employees. This is because they provide services to another person or business, as opposed to being employed by that person or business. This means it's important to understand the difference between the two.

As a rule, for an employment relationship to exist, a minimum level of mutual obligation is required. In other words, there is an obligation for one person to perform work (the employee) and for the other person to pay for that work (the employer). Courts look at the whole relationship between the parties when determining if a person is an employee or an independent contractor.

Below are some of the common indicators and general examples which, when considered together, can help tell the difference between an employee and an independent contractor.

You need to consider all these indicators when working out whether you're an employee or an independent contractor. There usually won't be one deciding indicator. For example, just because you have an ABN or issue invoices doesn't automatically make you an independent contractor.

A person won't automatically be an employee or an independent contractor because of the type of work they do. A person may perform the same type of work as an employee of a business but may still be an independent contractor. This means that whether someone is an employee or an independent contractor will depend on the individual circumstances.

Indicator	Employee	Independent Contractor
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<b>Intention of the parties</b>	<p>The parties' intention is to create an employment relationship. This intention could be shown by the worker providing a tax file number (TFN) and signing an employment contract.</p> <p>For example, the worker responds to a job ad for a casual cleaner. The worker attends a job interview and is given an offer letter. The worker is also required to complete onboarding paperwork including a TFN declaration form, employment contract and superannuation form.</p>	<p>The parties' intention is for the worker to be engaged as an independent contractor. This intention could be shown by the worker providing an Australian business number (ABN) and signing an independent contractor agreement.</p> <p>For example, a worker responds to an ad seeking cleaning services. The worker negotiates the terms of an independent contractor agreement, and invoices (which include the worker's ABN) are issued by the worker for cleaning services provided.</p>
<b>Able to delegate or subcontract work</b>	<p>Is required to complete the work themselves. For example, they can't ask someone else to go to their workplace and do their work for them.</p>	<p>Can delegate or subcontract the services to be performed to another person or business.</p>
<b>Amount of control over how work is performed</b>	<p>Performs work under the direction and control of their employer on an ongoing basis. Work is controlled by the employer including hours, work location and how work is done.</p> <p>For example, a shop assistant who is required to follow their manager's instructions about how to serve customers, display clothes and when to tidy the change rooms.</p> <p>For example, a gardener who attends sites at the times directed by their boss and is told to mow the lawns in a particular way.</p>	<p>Has a high level of control over the work they perform, their hours, work location and how they do the work.</p> <p>For example, a tailor who collects garments from clothing stores for alterations when it suits their schedule, makes alterations in the way they choose and works from their own premises.</p> <p>For example, a gardener who chooses their preferred suppliers and decides how and when to provide the landscaping services.</p>
<b>Financial responsibility and risk</b>	<p>Bears no financial risk (as this is the responsibility of their employer).</p> <p>For example, a baker who gets paid their regular daily wage even if the bakery doesn't make a profit for that day. The employer bears the loss of the unsold baked goods.</p> <p>For example, a painter who spends a day painting a house, but still gets paid by the employer for the work performed, even if the home owner has not yet paid the employer.</p>	<p>Bears the risk for making a profit or loss on each task. Usually is personally responsible and liable for poor work or any injury sustained while performing the task. As such, contractors generally have their own insurance policy.</p> <p>For example, a baker who supplies various baked goods to cafes but burns their croissants one day and can't charge the cafes for the burnt croissants.</p> <p>For example, a painter who paints a house in the wrong colour and doesn't get paid by the client for the time and money spent.</p>
<b>Tools and equipment</b>	<p>Tools and equipment are generally provided by the employer, or a tool allowance is provided.</p> <p>For example, an office worker who has their computer provided for them.</p> <p>For example, a cleaner who uses cleaning supplies provided by the</p>	<p>Uses their own tools and equipment (note: alternative arrangements may be made within a contract for services).</p> <p>For example, an auditor who brings their own computer to do their work.</p>

<b>Hours of work</b>	<p>Generally, works standard or set hours (unless they're a casual employee, in which case their hours may vary from week to week).</p> <p>For example, a person who works regular 5 hour shifts twice a week at a petrol station.</p>	<p>By agreement between both parties, decides what hours to work to complete the specific task.</p> <p>For example, a graphic designer who negotiates the cost of creating a logo based on how long it will take, and decides when they will do the work.</p>
<b>Expectation of work continuing</b>	<p>Usually has an ongoing expectation of work (note: some employees may be engaged for a specific task or specific period or on a casual basis).</p> <p>For example, a worker in a pet shop who works on a part-time basis, 4 times a week on an ongoing basis.</p>	<p>Usually engaged for a specific task.</p> <p>For example, a removalist who does a one-off house move for a customer.</p>
<b>Tax</b>	<p>Income tax is deducted by their employer.</p>	<p>Pays their own tax and GST (if applicable) to the Australian Taxation Office.</p>
<b>Superannuation</b>	<p>Entitled to have superannuation contributions paid into a nominated superannuation fund by their employer.</p>	<p>Pays their own superannuation (note: in some circumstances independent contractors may be entitled to be paid superannuation contributions).</p>
<b>Leave</b>	<p>Entitled to receive paid leave (for example, annual leave, personal/carers' leave, long service leave) or receive a loading in lieu of leave entitlements in the case of casual employees.</p>	<p>Doesn't receive paid leave.</p>

Learn more about the differences between contractors and employees in our short overview video.