

Independent Contracting and Labour Hire

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1) The status and Range of Independent contracting and labour hire arrangements

I have been employed in the Oil and Gas/Petro Chem industry for the past 16 years. In our industry the most common method of employment is by hourly paid contract, either independent, via employment agency, via a tied employment agency or directly hired hourly paid staff. Directly hired salaried staff are generally limited to juniors, recent graduates, trainees sales, and office administration.

By nature of our industry, projects are generally undertaken by large contractors, individual operators are not able to provide the financial resources required to manage a reasonably sized project.

All major contractors require individual contractors to contract to them under the above contract arrangements (ie a company structure, via an employment agency, or in limited cases, casual hourly paid)

In the case of independent contract a company structure is required. In this case the contractor is responsible for:

- a) Superannuation
- b) WorkCover (though all states have a double slug demanding workcover contributions from both the independent contractor and the hiring company, flagrant fraud on the part of these state government organisations)
- c) Public Liability Insurance
- d) Tax (Note all Hiring companies require documentary evidence of ABN registration and Tax file numbers)

The company structure does not provide lucrative Tax advantages. Few projects last for less than 12 months and generally 18 months to 2 years is more common. Under the current Tax rules, income cannot be split to family members, claims cannot be made for home office staff, all costs associated with family members to the administrative (BAS statements, bookkeeping etc) requirements of running a company structure must be unpaid. Tax rules do not allow provision to be made for long service leave, extended sick leave, or income averaging over poor income years. The only advantage for a contractor in maintaining a company structure, is that he may directly approach employing companies and contract himself directly, without the need to funnel his income through an agency.

In the case of employment agency (independent or tied) and hourly paid staff, the hiring company is responsible for :

- a) Superannuation
- b) Workcover (the double dip by Workcover applies equally where an employment agency is involved)
- c) I am not too sure on Public Liability, I believe the employee may be responsible.
- d) Tax.

In all cases the contractor or employee is only entitled to payment for direct hours worked, sick leave, holidays and public holidays are unpaid. There are no penalty rates, overtime is not paid other than at the standard hourly rate.

Where employment is via an employment agency, a percentage of the hourly rate is paid to the agency. This varies from 12 % to over 50% (this last value is not common, however there are reputable agencies and of course the other sort). In return for this % the agency will invoice client, deduct tax, deduct superannuation, and workcover. These deductions will be out of the hourly rate, not the % the agency receives. In some cases the agency may actually locate employment, generally, for established contractors, it is the contractor himself who will find the employment.

Rates are generally not generous but adequate to compensate for the uncertainty of employment and lack of holiday and sick leave. Termination is generally written in contracts as either an hour or a day notice, however in practise this is generally extended to 2 weeks. Experienced contractors are generally aware of project cycles and are aware when a project is running down and when their services will be terminated.

This arrangement, allowing contractors an illusion of independence, suits most in the industry.

2) Ways Independent contracting can be pursued consistently across state and federal jurisdictions

To obtain a consistent approach across all state requires consistent rules. Earlier in my career I was employed in a State Government Department as a Boiler Inspector. (this was some 30 years ago) At the time there were regular meetings of the Chief Inspectors from all States, with the stated aim of achieving uniformity of legislation and rules. If my memory serves me correct at that time these meetings had been regular events for at least 20 years prior. Now some progress has been made to achieve uniformity, however all States still reserve the right to formulate their own rules, and their rules are different and do change from time to time. This is one country and I cannot see the economic and safety justification for 7 sets of rules. If an action in Victoria is dangerous, surely it is equally dangerous in Queensland ?

To achieve consistent rules across state and federal jurisdictions requires that the regulations be governed by one body only. All governments, both State and Federal have consistently demonstrated that political grandstanding and attention grabbing for a political ego is more important than long term economic advancement.

It is unfortunate that the only viable means for consistent rules across all jurisdictions is for all regulations covering employment of contractors to be under federal control, as a national body. A body of representatives from each State Government will spend more time in political grandstanding (see my example above) than getting on with the 'job'. Assurances from State Governments that uniformity of legislation will be applied has no value whatsoever.

3) The role of Labour hire arrangements in the modern Australian economy.

4)

Contractor workers provide a flexible workforce, appearing when required, and accepting that projects are completed and jobs do run out, disappear without fuss. Contract workers generally accept short term re-location as a norm. Contractor workers accept a somewhat uncertain "job security" in return for generally higher than average remuneration to accommodate a volatile and at times uncertain job market. The remuneration is not as much over the average as the gross amount may appear, when the costs which must be paid by a contractor, but not by a salaried worker, are taken into account. This is accomplished with little industrial disruptions. The resources industry could not manage large projects from within Australia without a contract labour industry to call on. The alternative would be to allow all resource projects to be 100% managed and constructed by an offshore labour force. This would be strategically stupid, and would see a skills export from Australia which would not be regained.

Contract labour forces provide a base workforce for resource industry at major maintenance times, again appearing when required and moving on to the next plant or project as required. I can only comment on the industry which I am familiar with, however all industries go through peaks and troughs where a contract labour force can provide a valuable asset. As such, it would be desirable to support and encourage such structures, rather than penalize them.

5) Strategies to ensure independent contract arrangements are legitimate

Contract workers are found across a broad spectrum of the workforce, from university graduates with multiple degrees to manual labourers. It is expected that those with a higher education should be quite capable of negotiating their own contracts and have sufficient nous to ensure that they comply with legal requirements. Where a company structure is required,

the contractor will have access to an accountant who should be able to provide the correct advise on the delicacies of Tax compliance.

Manual labourers will generally be employed via a labour hire agency, As corporate entities these are readily subject to audit and review. It is accepted that unscrupulous operators will appear in any field, however this is within the jurisdiction of already established legal requirements, it is a matter of appropriate 'policing'

There appears to be a body of thought that suggest contractors do not pay tax, do not provide for their superannuation etc. In my experience all companies employing contractors require ABN registration where applicable, tax file numbers, evidence of Workcover registrtation (and payment), and evidence of Public Liability insurance. Tax evasion is not possible. Where the contractor has a company structure he is responsible for his own superannuation, this is well policed within current regulations. Long service leave, sick leave and accumulated leave are not part of the industry benefits and are therefore not relevant

The current rules for determining whether a contractor is "independent" are very much geared to the small operator, such as a building tradesman, who can work for a number of employers, and/or for whose skills there is a wide demand from the domestic and commercial market.

There is no recognition of the industry which employs specializes skills which are limited to that industry, nor of the fact that they tend to have long-running projects (one to two years), The IT industry would be in a similar position to mine, in that projects involving the installation of major software would have a duration of anything from 6 months to a number of years.. The taxation rules need to be adapted to take the industry type into account.

What would be beneficial to the industry as a whole, would be a single stop national workcover scheme instead of the fragmented state schemes. Hopefully appropriate regulations will ensure that the fraudulent state government practise of charging twice for contractors in a company structure will be ended.

Appropriate legislation to simplify contractor hire would be highly beneficial. A structure that would recognise contractors as an independent workforce, without the requirement for a company structure, or the use of an employment agency to channel payments, would substantially reduce costs. Contractors working in a company structure have company establishment and maintenance costs and accountant costs. A structure that recognises contractors as independent would substantially reduce these costs. A structure that would allow employers to direct hire contractors, who are recognized as contractors will immediately reduce the project wages bill by a minimum of 12 % for those who have previously been required to operate through an employment agency, it is understood that workcover, and superannuation issues would need to be addressed.

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