



The Fair Work Ombudsman can investigate complaints of sham contracting. Employers can be prosecuted and face penalties of up to \$33 000 per contravention for a body corporate or \$6600 for an individual if they are found to be engaging in sham contracting.

- Some employers misrepresent or disguise employment relationships as independent contracting to avoid having to give an employee their proper work entitlements, such as minimum rates of pay and leave entitlements.
- Arrangements such as these are not genuine and may be regarded as sham contracting. Sham contracting is against the law. It's also against the law to:
  - dismiss or threaten to dismiss an employee to re-engage them as an independent contractor to do substantially the same work; or
  - knowingly make a false statement to persuade or influence an employee to become an independent contractor.

## Is my contract a sham?

If an employer dismisses or threatens to dismiss an employee to re-engage them as an independent contractor to do substantially the same work, a Fair Work Inspector can apply to the courts to:

- stop the dismissal from happening
- order the employer to give the employee their job back
- have the employer compensate the employee
- make any other order the court considers appropriate.

Also, if an employee has been dismissed, the employee (or a union that represents them) can apply to Fair Work Australia to deal with the dismissal.



- Decide how to carry out the work and what expertise is needed to do so.
- 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.
- Are contracted to work for a set period of time (e.g. 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 are paid at the end of the contract or project.
- Do not get paid leave.

## Independent contractors

- Perform work, under the direction and control of their employer, on an ongoing basis.
- Generally work standard or set hours.
- Bear no financial risk (this is the responsibility of their employer).
- Are entitled to have superannuation contributions paid into a nominated superannuation fund by their employer.
- Have income tax deducted by their employer.
- Are paid regularly (e.g. weekly/fortnightly/monthly).
- Are generally entitled to get paid leave (e.g. annual leave, personal/carer's leave, long-service leave) if they are a permanent employee.

## Employees

## The Fair Work Ombudsman can help

### Need help?

**Call the Independent Contractors Hotline on 1300 667 850 or visit [www.fairwork.gov.au/contractors](http://www.fairwork.gov.au/contractors)**

The following Australian Government websites provide information and resources for engaging or operating as an independent contractor:

- Contracting in the building or construction industry  
[www.abcc.gov.au/independentcontractors](http://www.abcc.gov.au/independentcontractors)
- Rights and responsibilities of contractors and information on unfair contracts  
[www.business.gov.au/contractors](http://www.business.gov.au/contractors)
- Tax and superannuation for contractors  
[www.ato.gov.au/contractors](http://www.ato.gov.au/contractors)
- Having an ABN doesn't make you a contractor – are you entitled to one?  
[www.ato.gov.au/abnentitlement](http://www.ato.gov.au/abnentitlement)



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[www.fairwork.gov.au](http://www.fairwork.gov.au)  
Fair Work Infoline 13 13 94  
Mon-Fri 8.00am-6.00pm local time

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It's important to know the difference between an independent contractor and an employee to ensure they are receiving the correct entitlements. An employee will also have different rights and protections to an independent contractor. It's not always easy to tell the difference, but here are some of the indicators that make someone more likely to be an employee or an independent contractor. No single point makes a person either an employee or an independent contractor, it requires an overall assessment of all the factors.

## What's the difference?

Independent contractors are self-employed and contract their services to clients, such as other businesses. Although an independent contractor may perform work for a business, they are not regarded as an employee and will generally have different rights to employees. In a practical sense, they are 'running their own business';

Workers can be engaged in different arrangements in the hair and beauty industry.



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Fair work  
in the hair  
and beauty  
industry

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# What's the difference?

## Is Karen an independent contractor?



Karen is a hairdresser who works under a 'rent-a-chair' arrangement with Tara, the owner of Snips Hair Salon. Karen wanted to return to work one day a week after having her first child and was told by Tara that the only way this would happen was if Karen got an ABN and brought her own customers with her.

Karen wears the salon uniform and her client appointments are made through the salon receptionist. Karen must sell certain amounts of the hair products sold within the salon, and if she does not meet these targets money is deducted from her fortnightly pay. Karen is paid for all the hair services she performs, less the fee for the chair and any penalties payable if she has not met the sales targets allocated by Tara. This amount is calculated by Tara with no input from Karen.

Karen provides her own scissors as they are specifically made for her use, and uses all other products and equipment supplied by the salon at no charge. Karen issues Tara an invoice each fortnight that details the hours she has worked. Karen does not receive any annual leave, personal leave or superannuation, as Tara considers her to be an independent contractor.

**Based on the above facts, Karen is more likely to be considered an employee than an independent contractor. As an employee Karen would be entitled to the minimum terms and conditions of the relevant Modern Award (such as the *Hair and Beauty Industry Award 2010*) and the National Employment Standards under the *Fair Work Act 2009*. Note that no single factor makes a person either an employee or independent contractor.**

Depending on all the circumstances Tara, as the owner of Snips, may have contravened provisions of the *Fair Work Act 2009*, and could be exposed to court awarded penalties.

## Is Kate an independent contractor?



Amber runs a busy hairdressing salon in Sydney and has recently expanded her business to commercial clients at various sites. She has been struggling to keep up with the volume of work, and decided to engage a contractor to complete some of the jobs for her commercial clients. Amber's industry contacts referred her to Kate, who runs her own business as a freelance hairdresser.

Amber met with Kate and negotiated her contract and fees. It was agreed that Kate would be paid a rate of \$70 per haircut. Kate bills Amber on a monthly basis for the work she has done by supplying her with an ABN and invoice for payment. Kate supplies all her own tools and equipment and charges Amber for the hair products she uses. Kate is hired to work when she is needed by Amber's business. If Kate has committed to do a job for Amber but is unable to attend, Kate arranges a replacement to fill in for her.

When at a job, Kate is not subject to any direct supervision and is required to complete her tasks in line with her contract. Kate's performance of her tasks is measured against the terms of her contract and if she does not perform to the standard required she can be liable for any losses that are caused as a result.

**Based on the above facts it appears that Kate is an independent contractor. Note that no single factor makes a person either an employee or independent contractor.**

**Amber, as the hirer of Kate's services, needs to ensure that she is engaging Kate in a genuine independent contracting arrangement to avoid any contraventions of the *Fair Work Act 2009*.**

## The Fair Work Ombudsman can help

The Fair Work Ombudsman can investigate these arrangements. If you think you are being treated as an independent contractor when you are in fact an employee, you may be missing out on entitlements that are required to be paid to you. Visit [www.fairwork.gov.au/contractors](http://www.fairwork.gov.au/contractors) or call the Independent Contractors Hotline on 1300 667 850.