

## Is my contract a sham?

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.

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.

The Australian Building and Construction Commissioner (ABCC) has similar powers for matters in the building industry.



## 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)
- Taxation and superannuation for contractors  
[www.ato.gov.au](http://www.ato.gov.au)



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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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**Independent contracting**

Is your contract a sham?

The Fair Work Ombudsman can help

## Independent contractors are self-employed and contract their services to clients, such as other businesses.

An example is a plumber who is hired by a business to fix a burst pipe. The plumber attends the business with his own tools, fixes the pipe then bills the business for the cost of the job.

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'.

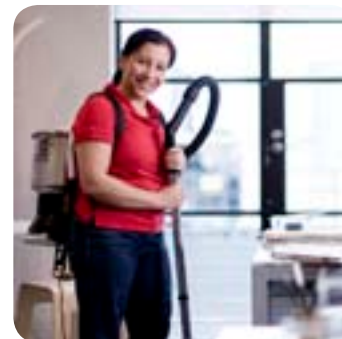
### What's the difference?

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.

### Employees

- 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.



### Independent contractors

- 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.