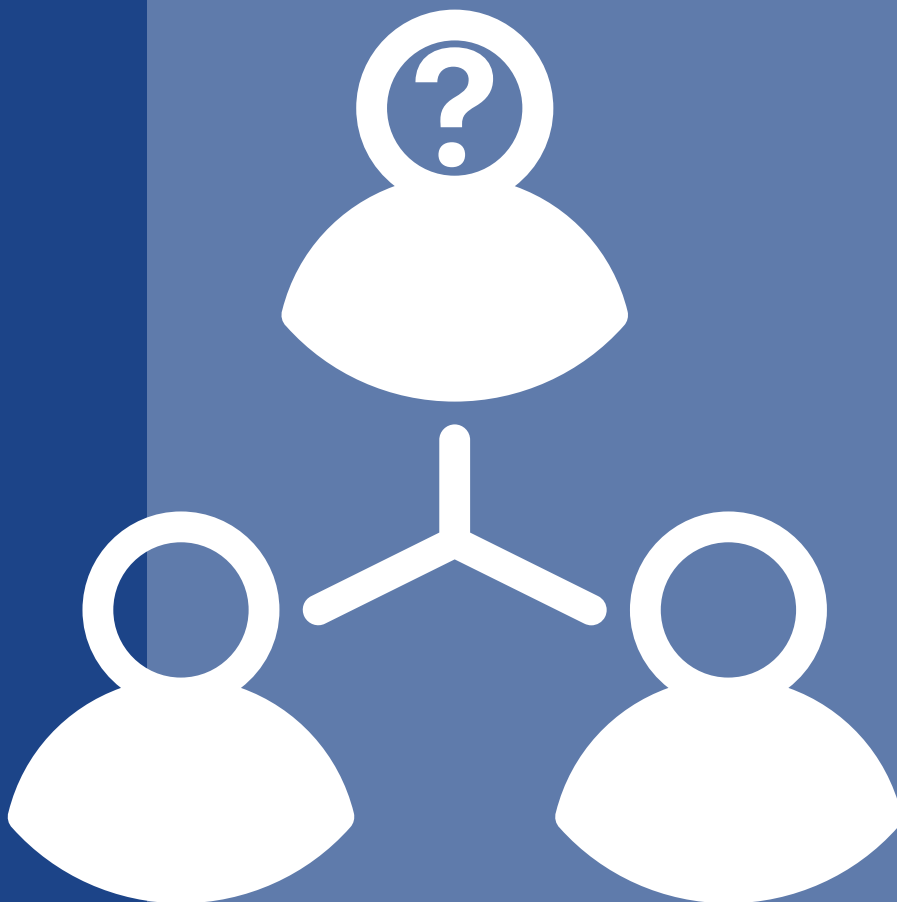


Employees vs. Contractors

Helpful tips and information on differentiating employees
and contractors





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You should consider obtaining independent legal or professional employment advice to check how the information relates to your unique circumstances.

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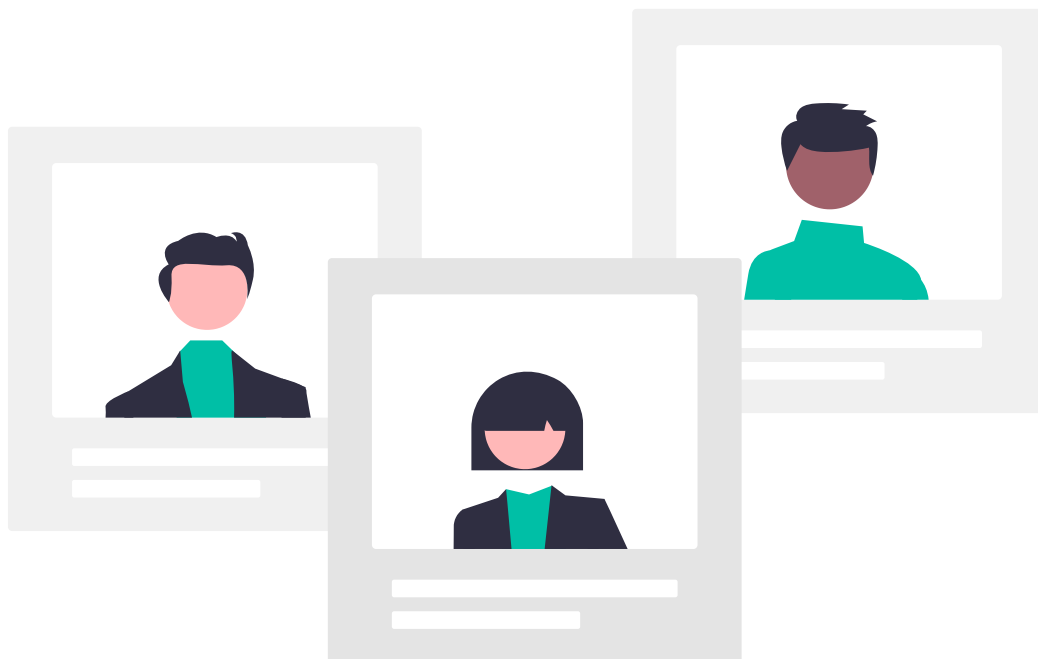
Introduction

Are you struggling to decide whether someone you've hired is an employee or a contractor?

There are multiple factors which need to be taken into consideration when making this decision as it is not as simple as you may think. If the incorrect conclusion is made, you can become liable for correcting the 'mistake', which can include back pay for correct hourly rate, establishment of leave balances and payment of superannuation.

This guide provides information on what makes a contractor and an employee and how to differentiate between the two so you can have peace of mind that you're hiring the correct worker for your needs.

So read ahead for our guide on employees vs contractors!



If you would like to learn more about how we can assist you with your HR needs for your business, book into a [30-minute consultation session](#) or contact us at admin@epollardconsulting.com.au

Or visit our [website](#) to learn more.

Independent Contractors

Independent contractors (also called contractors or subcontractors) have different rights and obligations to an employee. They provide services to another person or business and are not employed by that person or business. They are their own boss.

They have a high level of control over everything and can usually negotiate their own fees and working arrangements. They are also able to work for more than one client at a time.

Unlike employees, independent contractors are not covered by the National Employment Standards (NES). They do not receive employee entitlements such as annual leave, sick leave, and minimum rates of pay.

They do usually negotiate payment for the services they provide, as part of their contract. They will typically submit an invoice to be paid and can choose to be paid on a regular basis or at the completion of a contract/project.

Due to contractors not being covered by the NES, the Fair Work Ombudsman cannot enforce the payment of unpaid invoices which means the contractor must take their own legal action or seek independent legal advice if they do not get paid.

Independent contractors do still have rights and protections, such as being protected from adverse action, coercion and abuses of freedom of association. They are also responsible for paying their own tax and GST (if applicable) to the ATO, and usually pay their own superannuation.

In some circumstances, a business may need to pay superannuation for the contractor. For example, where a contractor provides regular labour to a business. It is wise to check your particular situation!

 *Did you know?*

Having an ABN does not guarantee that someone is a contractor.



Employees

An employee is directly employed by their employer and performs their work under the direction and control of their employer.

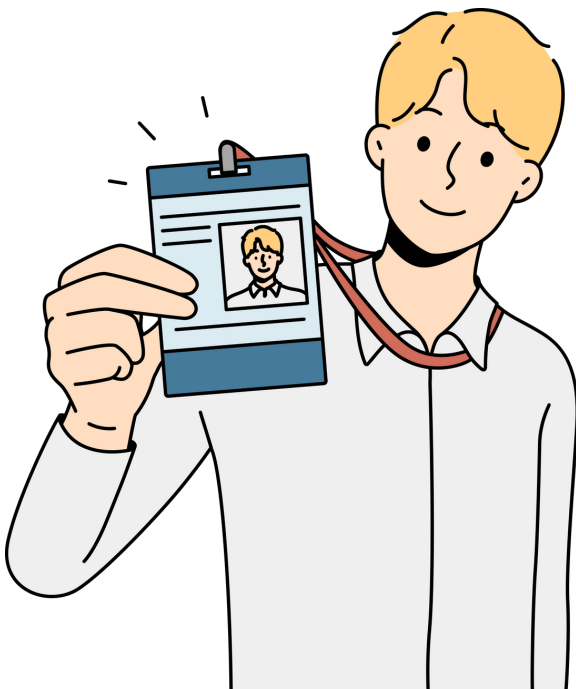
Everything is managed by the employer, including hours, work location, and how work must be carried out. Employees are paid a wage by their employers in line with the National Employment Standards (NES), either for the time worked, a price per item or activity, or a commission.

Employees represent your business and not themselves, and are under the responsibility of your employ, meaning that your business bears the commercial risk for any costs covering any injury or defect in their work.

Employees are covered by the NES and have entitlements such as sick leave, annual leave and minimum rates of pay.

Tip

Keep in mind that there usually won't be one deciding indicator that a person is a contractor or employee, e.g., issuing invoices doesn't automatically make you a contractor.



The importance of differentiating

What is agreed to at or before the start of the working relationships is the only relevant information. Anything that happens after the contract has already been agreed to will usually not be relevant to confirming whether the person is a contractor or an employee.

The type of work also does not determine whether someone is a contractor or an employee.

Some indicators that can help you figure out if someone is an employee or a contractor are:

- how much control you have over how their work is performed,
- the financial responsibility and risk for the work being delivered,
- if you or they supply the tools and equipment,
- If they have the ability to delegate or subcontract work,
- their hours of work,
- if there is an expectation of work continuing.

Tip

If you still aren't sure whether someone is an employee or a contractor, you can always consider seeking legal advice.

? Did you know?

Temporary work does not automatically define that the person is a contractor. Both employees and contractors can be called in for temporary, on-call or infrequent work, or even short or specific tasks or projects.



Sham Contracting

Sham contracting is when a business (or individual) makes a worker believe that they are a contractor when in fact they are an employee. If the business (or individual) was aware this person was an employee, there may be a sham contracting agreement.

Sham contracting is:

- knowingly representing to an employee that they are an independent contractor when they aren't (this includes when the employer should have reasonably known),
- convincing the employee to do the same work for the employer as an independent contractor by making false statements,
- dismissing, or threatening to dismiss, an employee to utilize them as an independent contractor or to do the same (or mostly the same) work,

and it is illegal under the Fair Work Act 2009.

Employers have been known to arrange sham contracting to try and avoid the responsibility of paying legal entitlements to employees. Be mindful that this can cause courts to impose penalties against businesses/corporations (max. penalty \$93 900 per contravention) or individuals (max. penalty \$18 780).



Helpful Resources

For more helpful free resources, visit our website www.epollardconsulting.com.au

Other Resources

- business.gov.au - <https://www.business.gov.au>
- Fair Work Commission - <https://www.fwc.gov.au/>
- Fair Work Ombudsman - <https://www.fairwork.gov.au/>
- SafeWork SA - <https://www.safework.sa.gov.au/>
- Skills SA - <https://www.skills.sa.gov.au/>

