

FACT SHEET – EMPLOYMENT LAW

WHAT IS THE DIFFERENCE BETWEEN AN INDEPENDENT CONTRACTOR AND AN EMPLOYEE?

When preparing contracts in relation to the engagement of a worker it is important to determine whether the worker is an employee or an independent contractor. There are important differences in your obligations to the worker depending on the worker's status.

Over time it has become recognised that there are six main categories that determine whether a worker is an employee or independent contractor. These categories are:

- Control;
- Remuneration;
- Provision of equipment and tools;
- Commercial Risks
- Ability to sub-contract or delegate; and
- Independence.

Control

The degree of control exercised by the party engaging the worker in relation to when, where and how the work is performed and how much supervision and monitoring there is in relation to performance of the work. The more control over how the work is done indicates that the person performing the work would be regarded as an employee.

Remuneration

Is the person paid by wages or salary on a regular weekly, fortnightly or monthly basis based on the hours worked or on completion of a particular task, project or achievement of set results based on a quotation given? If the person is paid upon the completion of a set task or project or upon the achievement of results, based upon a quote provided then they are more likely to be seen as an independent contractor.

Provision of equipment and tools

If the business engaging the worker provides all of the necessary equipment and tools and reimburses the worker for any expenses in relation to equipment the person is more likely to be seen as an employee. An independent contractor is generally required to provide all of the tools and equipment necessary to perform the work.

Commercial Risks

Who bears the legal risk for the work performed? Does the company engaging the worker bear that risk and have to rectify any defects at its cost or does the worker bear the risk?

Ability to sub-contract or delegate

Does the worker have to perform the work themselves or can they engage another person to complete the work, task or project?

Independence

Is the worker seen as part of the business that is engaging them or separate to it and running their own business? Is the worker free to accept or reject additional work? If the worker operates their own business and performs work for other entities and can accept or reject additional work they are more likely to be considered an independent contractor.

Obligations

There are important differences in your obligations to a worker as opposed to an independent contractor in relation to leave entitlements, superannuation and workers compensation among others. It imperative to ensure the worker is classified correctly so that you meet your obligations.

Checklist

We have prepared a checklist to help determine the status of a worker. Click on the checklist link on our website Factsheet page.

For more information in relation to employment contracts and clarifying whether the person you are engaging is an employee or independent contractor contact Daniel Hutchinson.