

CONTRACTORS OR EMPLOYEES?



The line between an employment relationship and a contractor/payer relationship has become increasingly blurred in recent years.

The following checklist, adapted from TR 2005/16, summarises the key indicators of whether a contract is one **of** service (and therefore represents an employer/employee relationship), or one **for** services (representing an independent contractor/principal relationship). These principals are generally relied upon to determine if an individual is a common law employee for many employer obligations.

Relationship Features	Employee Indicators	Contractor Indicators
Control	Under a contract of service, the employer exercises control over what work is to be done and the manner in which the employee is to perform the work.	An independent contractor agrees to produce a given result, and generally has a high level of discretion on how the work is to be performed to achieve that result. That is, the contractor works on their own account to achieve the results specified in the contract. Note that the contract can still be one for services, even though it details how the contracted services are to be performed and/or what materials are to be used.
How is the work performed?	Tasks are performed at the request of the employer. The worker is to be working in the employer's business.	An independent contractor enters a contract to achieve a specific task(s). The contractor has a high level of discretion and flexibility on how the work is to be performed. However, the contract may contain precise terms as to materials used and methods of performance and still be for services.
Risk	An employee bears little or no risk. The employer generally: <ul style="list-style-type: none"> • Bears all the commercial risk; and • Is responsible for any loss that arises due to the poor workmanship or negligence of the employee. 	As an independent contractor is working on their own account to generate a profit, they are exposed to the risks associated with a particular job, such as losses from poor workmanship or sustaining an injury. An independent contractor usually takes out their own insurance policy to cover such risks.
Place of Performance	An employee generally performs the tasks on the employer's premises, using the employer's assets and equipment.	An independent contractor may have their own base of operations and generally provides all their own assets and equipment.
Hours of Work	An employee generally works standard or set hours.	Independent contractors generally set their own hours of work.
Leave Entitlements	The contract generally provides for annual leave, long service leave, sick leave and other benefits or allowances.	Generally, an independent contract does not contain leave provisions.
Payment	An employee is generally paid an hourly rate, piece rates or award rates.	Payment is usually based upon performance of the contract (eg successfully completing a particular task or series of tasks).
Expenses	An employee is generally provided with an allowance, or reimbursed for expenses incurred whilst employed.	Generally, an independent contractor incurs their own costs in relation to performing services.
Termination	An employer reserves the right to dismiss an employee at any time (subject to State or Federal Laws).	An independent contractor is contracted to complete a set task. The payer may only terminate the contract without penalty where the contractor has not completed the task under the conditions of the contract. The contract usually contains terms dealing with defaults made by either party.

<<Source: NTAA Tax on the Couch – November 2013>>

If you would like to discuss this topic in further detail please contact Graeme or Shawn at our office.