

## Fact Sheet Employee vs Contractor

Determining if an individual is classified as an employee or contractor is unfortunately complex and not straight forward. It is critical that businesses get it right, so they do not end up in a situation that results in a costly and timely fix.

The aim of this fact sheet is to understand if an individual is an Employee or Contractor. You need to give due consideration to all the factors listed below and decide based on the weighting of all the factors considered together.

If an individual is engaged as a contractor but is legally considered an employee, they could potentially be owed unpaid leave entitlement, wages (including overtime and penalty rates) and superannuation contributions.

Factor	Employee	Contractor
<b>Control</b>	Employer usually has the right to control how, when and where a worker performs their duties. Tasks are usually performed at request of employer.	Contractor works at own initiative to achieve a stated result. Contractor maintains discretion and flexibility as to how work is completed, although contract may specify some terms as to materials used and methods of performance.
<b>Exclusivity</b>	Employee usually works exclusively for employer.	Contractor is free to provide services to multiple clients.
<b>Delegation</b>	Employee is personally engaged to perform the role and has no inherent right to delegate performance of the role to another employee, unless authorised by employer.	Contractor may delegate all, or some, tasks to another person and may employ other persons to perform the services (although this may be subject to the principal's consent).
<b>Risk</b>	Employee bears little or no responsibility to rectify poor work. Employer is responsible to others for poor work of employee.	Contractor must rectify poor work at own cost and effort and bears commercial risk of loss incurred by principal due to contractor's poor work.
<b>Tools and Equipment</b>	Employee generally performs work using tools and equipment provided by employer, at employer's place of work. Employee is generally reimbursed for expenses personally incurred by them in performing work, as long as they are authorised by the employer.	Contractor generally provides their own tools and equipment. Contractors are not usually reimbursed for expenses they incur in providing the services.
<b>Hours of Work</b>	Employee has hours of work set by employer.	Contractor can set their own hours of work, as long as they perform the services.
<b>Leave Entitlements</b>	Employee is entitled to annual leave, long service leave and sick leave, and this is usually provided for in written contract.	Contractor is not entitled to leave, and a written contractor agreement would not usually provide for these things.
<b>Payments</b>	Employee is generally paid for their time, e.g. hourly, weekly, annual salary.	Contractor is generally paid for providing services or completing units of work. Contractor usually issues tax invoices.
<b>Method of Engagement</b>	Employees are always personally engaged.	If an individual is engaged through a trust, partnership or company, this usually indicates a contractor relationship.
<b>Part of the Business</b>	The work of an employee is usually essential to the business carried on by the employer. Employee is working in the business of the employer.	Contractor carries on their own business, independently of the employer and as distinct from the employer's business.