

Offshoring Risks and Considerations for Businesses

With more Australian businesses hiring offshore talent, it's essential to understand the legal, operational, and reputational risks associated with direct hiring versus using a reputable outsourcing provider. This fact sheet summarises the key considerations to help you assess which option is right for your business.

Why some businesses choose to hire directly

- Perceived cost savings (by avoiding outsourcing fees and office overheads such as facilities, management, and IT infrastructure)
- Greater control over recruitment, task assignment, and the working relationship
- Belief that direct hires offer better team integration and a more personal, tailored recruitment process



But Offshoring Directly ≠ Risk Free

Risk Type	Explanation
Legal	Misclassification can lead to Fair Work claims, backpay, superannuation, etc.
Compliance	Breach of Australian or foreign labour laws; potential blacklisting.
Data & Security	Personal devices, unsafe networks, and home offices lack enterprise security.
Operational	Unreliable infrastructure (power outages, internet issues, weather disruption)
Reputational	Ethical concerns or disputes can harm brand and employee trust.
Financial	Long-term costs may exceed perceived savings due to fines or inefficiencies.

Legal frameworks to understand

- **Substance over form:** It's not what the contract calls them (e.g. "contractor") that matters — it's how they actually work with your business. If they work like an employee, they may legally be one.
- **Fair Work Act 2009:** Applies a holistic test examining:
 - Level of control exercised by the business
 - Whether the worker bears business risks
 - Ability to delegate or subcontract
 - Payment structure (hourly vs project-based)
 - Exclusivity and integration into the business.
- **Pascua v Doessel Group Pty Ltd (2024):** FWC deemed a Philippine-based contractor an Australian employee and awarded compensation for unfair dismissal.

Why use an outsourcing provider?

- You engage the provider, not the worker. This removes direct employer liability.
- The outsourcing provider handles payroll, HR, compliance, and local laws.
- Enterprise-level infrastructure (ISO, VPNs, equipment control, business continuity)
- Better staff engagement, supervision, and training.

Advice for Employers

- Conduct due diligence before expanding your team offshore, including reviewing your contract terms vs actual working practices
- Understand the risks of direct hire—including legal, compliance, and reputational exposure
- Avoid direct hiring models entirely where possible, as they can expose your business to significant liability
- Different industries (e.g., IT, finance, legal) have unique legal, ethical, and compliance obligations—meaning the risks of offshoring can vary significantly depending on your sector.
- Engage a reputable outsourcing partner who can provide compliance, infrastructure, and employer coverage

In summary

Engaging offshore workers can be a smart move for business growth – but only when done correctly. Direct hiring may save on paper but can expose your business to serious risk. Outsourcing providers offer a structured, compliant way to build offshore capability.

**Need help assessing your offshore model?
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