



RICHARDS FINANCIAL

CHECKLIST – EMPLOYEE OR CONTRACTOR*

Employees Are engaged under a contract of service, which is characterised by the employer's right to command and control the work of the employee.

Independent Are engaged under a contract for service. However, how they achieve that result is under

Contractors their own control. Payment is usually based on the completion of the task.

If the answer is yes to all the following, then it is likely the person is an employee.

- Is the worker paid a wage or salary?
- Is the work performed at the employers' place of business?
- Does the worker work regular hours set by the employer?
- Does the employer have limited right to direct how the work is carried out and by whom?
- Is the worker restricted in his / her ability to sub-contract part or all of the work?
- Is the worker hired as apprentice, trainee, trades assistant or labourer?
- Is the majority of the plant and equipment supplied by the employer?
- Is the person paid an allowance or reimbursement for the cost of equipment, tools or assets?
- Is the person engaged for a time-period rather than to produce a particular result?
- Does the person take no legal risk?
- Does the employer deduct PAYE tax, superannuation contributions or pay workers compensation insurance?

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**If the answer is yes to the following, then the person may be a contractor.
However, no single criterion is likely to be conclusive.**

- Can the person sub-contract any or part of the work without consultation?
- Can the person decide how the work will be undertaken and by whom or employ others to complete it?
- Does the person own and maintain equipment required to complete the task?
- Does the person have an opportunity to make a profit or a loss on the job?
- Is the person paid on completion of the job or result achieved, and the provision of an invoice (based on a quote) is provided?
- Is the person required to rectify any faults with the performance of the job?
- Is the person legally responsible for their work?
- Does the person carry out the work under a business name, partnership or company structure?
- Is the worker operating their own business independently from your business?

Your Tax and Super obligations.

Your tax, super and other obligations will vary depending on whether your worker is an employee or contractor.

If your worker is an employee you'll need to:

Withhold tax (PAYG withholding) from their wages and report and pay the withheld amounts to the ATO.

Pay super, at least quarterly, for eligible employees

Report and pay fringe benefits tax (FBT) if you provide your employee with fringe benefits.

If your worker is a contractor:

They generally look after their own tax obligations, so you don't have to withhold from payments to them unless they don't quote their ABN to you, or you have a voluntary agreement with them to withhold tax from their payments
You may still have to pay super for individual contractors if the contract is principally for their labour.

You don't have FBT obligations.

Remember, it's against the law to wrongly treat an employee as a contractor so you need to check that you've got it right. If you don't get it right, penalties may apply and the whole payment may become non-deductible.

Source www.ato.gov.au

There is a contractor/employee decision tool on the ATO website we would highly recommend you use for each person when making the assessment of whether they are a contractor or an employee:

<http://www.ato.gov.au/Calculators-and-tools/Employee-or-contractor/>

*Please refer to TR 2000/14 for more detailed analysis of the difference between the two.

Please also see:

<https://www.ato.gov.au/Business/Super-for-employers/Working-out-if-you-have-to-pay-super/>

<https://www.ato.gov.au/Calculators-and-tools/Super-guarantee-eligibility/>

<https://www.ato.gov.au/business/employee-or-contractor/difference-between-employees-and-contractors/>

<https://www.ato.gov.au/Business/Employee-or-contractor/Your-tax-and-super-obligations/>