

EMPLOYEE VERSUS CONTRACTOR CHECKLIST

April 15, 2013

When engaging a worker, employers should determine if the individual is an employee or contractor. Each engagement should be assessed according to its specific circumstances to ensure the relationship is correctly classified and managed according to the respective legislative requirements. Employers risk prosecution if they wrongly classify workers as contractors rather than employees or are involved in sham contracting.

The differentiating factors of an employee as opposed to an independent contractor are complex.

The following checklists highlight the factors you should consider when assessing a workers engagement.

Members should note, it is not the Contract under which you engage an individual or if they have an ABN that determines your obligations, but the overall way the individual works within your organisation including control the individual has over their work and the right to reassign work to another individual.

Financial Service Providers engaging Authorised Representatives should also conduct this assessment to determine the independence of the AR from the Licensee.

TEST 'A'

CONTRACTORS

Contractors usually have independence from the entity they contract to. This independence allows them to:

- (a) choose what type of work they wish to be engaged in,*
- (b) how they meet the requirements of the Contract, and*
- (c) Control over how they complete the work such as where they work and the number of hours they work.*

This independence also results in the worker being responsible for their work and the ongoing costs associated with delivering the service.

If you answer NO to any of the following statements this may indicate the worker is an employee and does not meet all the requirements to be classified as a Contractor. You may wish to address these issues through the contract or your operational processes.

1.	Does the worker have a Pty Ltd company or registered business name with an ABN?	Yes	No
2.	Does the worker also provide services to other businesses or seek work from other sources?	Yes	No
3.	Is the worker being engaged for a specific task or duty with a completion date?	Yes	No
4.	Is there a written Agreement which stipulates independence, the task(s) or project, service delivery requirements, responsibility for defects or quality of work?	Yes	No
5.	Does the worker delegate all or some of the tasks that they have been contracted for to another person or employ others in their own business which assists in the delivery of services outlined in the Agreement?	Yes	No
6.	Does the worker set their own hours?	Yes	No
7.	Does the worker provide their own tools &/or equipment?	Yes	No
8.	Does the worker pay for most of his / her own work related expenses?	Yes	No
9.	Is the worker paid according to progress outcomes achieved or completion of a task?	Yes	No

EMPLOYEE VERSUS CONTRACTOR CHECKLIST

April 15, 2013

10.	Does the worker issue a Tax Invoice for services rendered?	Yes	No
11.	If the worker is an Authorised representative, do they own all or part of the portfolio?	Yes	No
12.	If the worker is an Authorised representative, do they acquire servicing rights from the Licensee which they control and have the right to sell or trade?	Yes	No

TEST 'B'

EMPLOYEES

Employees usually do ongoing work that is controlled by their employer. Whilst Employees enter into Employment Contracts and may negotiate some of the terms or conditions of the contract, the employer maintains control over the worker. Employees do not take responsibility for any financial risk or consequence from the role they perform. Employees have rights in relation to minimum wages and entitlements.

Employees are individuals that cannot delegate responsibility to another individual without the prior consent of the employer.

If you answer YES to any of the following statements this may indicate the worker is an employee and does not meet all the requirements to be classified as a Contractor.

1.	Does the worker have no or little control over how and when they work?	Yes	No
2.	Is the workers engagement ongoing and not limited to a specific timeframe, particular project or task?	Yes	No
3.	Does the worker present himself / herself as a worker of the employer such as wearing a uniform with the employers logo / branding, have a business card with the employers logo / branding or generally trade under the employers trading name?	Yes	No
4.	Does the worker have set hours of work?	Yes	No
5.	Is the worker paid for the hours worked?	Yes	No
6.	Does the worker have a regular workplace supplied by the employer?	Yes	No
7.	Does the worker use tools and equipment supplied by the employer?	Yes	No
8.	Is the worker protected by professional indemnity and other insurances held in the name of and paid by the employer?	Yes	No
9.	Is the worker restricted to work for the one employer only or required to obtain permission before engaging in work for another entity?	Yes	No
10.	Has the worker transferred to the employer from a business acquired where the worker was previously classified an employee?	Yes	No

EMPLOYEE VERSUS CONTRACTOR CHECKLIST

April 15, 2013

OBLIGATIONS

Businesses have legislation and regulations they must comply with when engaging individuals to perform work.

There are various federal and state authorities involved in managing workers including the Australian Taxation Office, Fair Work Australia, State Workers Compensation authorities and State Revenue Offices for payroll tax. Each of these authorities may have differing definitions of what is classified an employee or contractor when determining an employers obligation or liability.

The following table includes a list of the various authorities you should consider when engaging workers whether employees or contractors. We recommend you obtain information from the authority relevant to your location.

Note: Links correct as at 15th April 2013

1.	<p>Australian Taxation Office – Employee or contractor for tax and super purposes.</p>	<p>http://www.ato.gov.au/content/00095062.htm?alias=employeecontractor</p>
2.	<p>Fair Work Australia- Independent Contractors Act 2006 & Fair Work Act 2009</p>	<p>https://www.fairwork.gov.au/resources/fact-sheets/workplace-rights/pages/independent-contractors-and-employees-fact-sheet.aspx</p>
3.	<p>Payroll Tax –</p>	<p>Revenue Sth Australia - http://www.revenuesa.sa.gov.au/payrolltax/contractor_decision_tools.html</p> <p>State Revenue Office Victoria- http://www.sro.vic.gov.au/SRO/SROnav.nsf/childdocs/-3A87315B22BC23FFCA2575A100441F59-11C80F203927331FCA2575A100441F65-FA02DA4019F7FFD2CA2575A100441F72-B8E5F1751F793D88CA2575C8000A7FC3?open</p> <p>Office of State Revenue NSW- http://www.osr.nsw.gov.au/lib/doc/rulings/rrpta38.pdf</p> <p>Office of State Revenue QLD- http://www.osr.qld.gov.au/payroll-tax/contractors/index.shtml</p> <p>Office of State Revenue WA- http://www.finance.wa.gov.au/cms/uploadedFiles/State_Revenue/Payroll_Tax/Questionnaire_Contractor_Payments.pdf</p> <p>State Revenue Office TAS- http://www.sro.tas.gov.au/domino/DTF/SROWebsite.nsf/v-all/790C6A53A3B292B1CA2578DC001FD818/\$file/PTA038v3.pdf</p> <p>Revenue Office ACT- http://www.revenue.act.gov.au/payroll_tax/taxable_wages_and_payments</p>

EMPLOYEE VERSUS CONTRACTOR CHECKLIST

April 15, 2013

4.	Workers Compensation / Work Cover	<p>Work Cover Sth Aust (<i>see Guide to definition of worker</i>) http://www.workcover.com/workcover/resources/publications</p> <p>Work Safe Victoria http://www.worksafe.vic.gov.au/insurance-and-premiums/contractors-and-workers/worker-and-contractor-assessment-tool</p> <p>NSW Work Cover Authority http://www.workcover.nsw.gov.au/aboutus/howdoi/Pages/HDIworkerorcontractorformypremiumcalculation.aspx</p> <p>Work Cover QLD http://www.workcoverqld.com.au/insurance/do-i-need-a-policy/who-should-i-cover/worker-determination</p> <p>Work Cover WA http://www.workcover.wa.gov.au/NR/rdonlyres/1CC39C4C-79F9-4679-8D06-DBDA0C8CE63B/0/Info_Sheet_Contractors_and_Subcontractors.pdf</p> <p>Work Cover TAS (<i>see pg 6 Definition of Worker</i>) http://www.workcover.tas.gov.au/_data/assets/pdf_file/0005/163643/Workers_Compensation_Handbook_The_Basics.pdf</p>
5.	Sundry Guidance	<p>http://www.business.gov.au/IndependentContractors/DecisionTool.aspx</p>