

Am I being treated fairly at work?

What are my employment rights?

Where do I go for help?

# INDEPENDENT CONTRACTING TRAPS

## DISCLAIMER

This infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information.

If you are an independent contractor, you are not an employee but are working for yourself. Independent contractors often register as a business. Usually in independent contracting, the emphasis is on getting a particular job finished, rather than working a particular number of hours.

There are certain types of occupations where workers may think they are employees but their boss considers them to be **independent contractors**. Some examples include couriers, mail delivery, cleaners, letterboxing and door-to-door sales.

You might be called an independent contractor because the person you work for has decided it is cheaper or that it limits their legal obligations.

Are you an Independent Contractor? Independent contractors may be known by other names including sub-contractors, subbies, contractors, independent agents, consultants, etc.

In some circumstances workers who are **called independent contractors** are actually considered legally to be **employees**. It is important to know this because many laws which protect employees' rights do not apply to people classified as independent contractors.

This infosheet provides information about the implications of working as an independent contractor and about the legal tests which determine whether a worker is actually an employee or a contractor.

## Implications for contractors

There are some important things to keep in mind if you are working as an independent contractor. Many laws which protect employees' rights do not apply, or apply differently, to people classified as independent contractors.

### Workers compensation/WorkCover

Employees are entitled to workers' injury compensation (WorkCover) in the case of accident or injury at the workplace. If you are an independent contractor, you may not be entitled to compensation unless you have arranged your own accident protection insurance, which can be expensive. Some contractors may be covered by WorkCover – contact the WorkSafe/Workcover Authority in your State — see 'Where to get help' below.

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**Employment Rights Information for Workers** – Job Watch Inc is an independent, not for profit, employment rights legal centre. It provides a free, confidential telephone information and referral service and other assistance to workers.  
Hours: Mon–Fri 9am–5pm (Wednesdays until 8:30pm).

## Occupational health and safety

OHS laws apply to independent contractors as well as employees. This means that your boss must provide you with a safe and healthy workplace. You are also required to comply with the duties set out in your State's Occupational Health and Safety laws.

## Superannuation

Some independent contractors are entitled to receive superannuation from their principal (boss). For clarification, contact the Australian Tax Office. If you are not covered, you will have to arrange your own super contributions.

## Taxation

If you are a contractor, you may have to pay tax at a different rate to employees. You also may have to arrange to pay your own tax. Contact the ATO for further information.

## Unfair dismissal

Unlike employees, independent contractors cannot make an unfair dismissal claim. Nevertheless, independent contractors may have some rights under the General Protections in the *Fair Work Act 2009*, under State and federal anti-discrimination law and/or under the *Independent Contractors Act 2006*. Call JobWatch's infoline as soon as possible for further information as strict time limits apply.

## Wages and conditions

Unlike employees, independent contractors are not entitled to a minimum rate of pay or conditions such as annual, parental, sick and personal leave, long service leave, redundancy entitlements, rest breaks, etc. Your pay and conditions are solely a matter for negotiation between you and your boss.

Further, contractors are not guaranteed regular payment of wages in the way that employees are. You may have to wait until the job is completed for payment.

Call JobWatch's Telephone Information Service on (03) 9662 1933.

The Office of Fair Work Ombudsman cannot assist independent contractors to recover unpaid monies for work performed. If the person refuses to pay you (eg after a letter of demand), to recover payment you will need to begin legal proceedings in either an eligible court or your State's Civil and Administrative Tribunal. This can be expensive and you should get legal advice prior to taking this step. You have 6 years to file a claim from the date the debt was due to you.

## Independent contractor or employee?

Some workers are called independent contractors but in certain circumstances the law may consider them to really be employees. You are more likely to be seen to be an independent contractor if:

- you provide your own **tools and equipment**;
- you have a **greater degree of control** over when and how you do your work — the greater the control your boss has, the more likely it is that an employment relationship exists;
- you give the boss an **invoice** so they can pay you;
- you **choose the hours** you work;
- you work for more than one boss;
- you have registered your own business and have an **ABN**;
- your contract says so — the contract may be in writing or your boss may have said you would be a contractor;
- you are free to get **other people** to do the work for you;
- your pay is based on your **output rather than the hours** you work.

If you are unsure as to whether or not you are really working as an independent contractor, seek advice from your union or a lawyer.

If a person is required to wear a uniform to promote the boss' business then it is **less likely** that they are independent contractors.

No one of these factors is enough, by itself, to make somebody an independent contractor. **All the factors are considered.** If you are unsure as to whether or not you are really working as an independent contractor, then it is always good to seek advice from your union or a lawyer.

## Signing a contract & keeping notes

Note that when a contract has been signed and it states clearly that the person is an independent contractor, you will be treated as a contractor until proven otherwise. Workers can legally challenge the contract, but it will be up to them to prove they are employees.

If you are unsure about a working arrangement, **get advice** before agreeing to something that sounds like independent contracting or before signing a contract you do not understand.

If you work as an independent contractor, **try to get a written contract** completed before you start the job, so that the terms and conditions of the business arrangement are clear. Keep clear notes of dates, facts and what is said in any negotiations. We also recommend that you **keep a record of all work performed**, specifically the dates, location and tasks.

## Where to get help

ORGANISATION	PHONE	WEBSITE
Australian Human Rights Commission	Complaints Infoline: 1300 656 419 General enquiries: 1300 369 711	<a href="https://www.humanrights.gov.au">https://www.humanrights.gov.au</a>
Fair Work Commission Helpline	1300 799 675	<a href="https://www.fwc.gov.au/">https://www.fwc.gov.au/</a>
Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94	<a href="http://www.fairwork.gov.au/">http://www.fairwork.gov.au/</a>
Job Watch Inc	Metro:(03)9662 1933 Rural: 1800 331 617	<a href="http://www.jobwatch.org.au">www.jobwatch.org.au</a>
Victorian Civil and Administrative Tribunal	(03) 9628 9900	<a href="http://www.vcat.vic.gov.au">http://www.vcat.vic.gov.au</a>
Queensland Civil and Administrative Tribunal	1300 753 228	<a href="http://www.qcat.qld.gov.au">http://www.qcat.qld.gov.au</a>
Magistrates Court of Tasmania – Hobart	03 616 57136	<a href="http://www.magistratescourt.tas.gov.au">http://www.magistratescourt.tas.gov.au</a>
Anti-discrimination Commission Queensland	1300 130 670	<a href="https://www.adcq.qld.gov.au/">https://www.adcq.qld.gov.au/</a>
Equal Opportunity Tasmania	1300 305 062	<a href="http://www.equalopportunity.tas.gov.au/">www.equalopportunity.tas.gov.au/</a>
WorkSafe Victoria	Metro: (03) 9641 1444 Rural: 1800 136 089	<a href="http://www.vwa.vic.gov.au/home">http://www.vwa.vic.gov.au/home</a>

<b>WorkSafe Tasmania</b>	1 300 366 322	<a href="http://www.worksafe.tas.gov.au">www.worksafe.tas.gov.au</a>
<b>WorkSafe Queensland</b>	1 300 362 128	<a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a>
<b>ACTU Worker Information line (for referral to a union)</b>	1300 362 223	<a href="http://www.actu.org.au">www.actu.org.au</a>
<b>National Association of Community Legal Centres</b>	02 9264 9595	<a href="http://www.naclc.org.au">www.naclc.org.au</a>

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JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.