

Independent Contracting Traps

JobWatch
Employment Rights Legal Centre

If you are an independent contractor, you are not an *employee* but are working for yourself. Generally, independent contractors are running their own business, and the emphasis is on getting a particular job finished, rather than working a particular number of hours.

However, in some circumstances, workers may regard themselves as employees, but the person they are working for considers them to be independent contractors. This may be because the person they work for has decided it is cheaper or that it limits their legal obligations.

A worker engaged as an independent contractor may later be legally recognised as an employee (and vice versa) in certain circumstances. It is important to understand this, because many laws which protect employees' rights do not apply to people classified as independent contractors.

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

Independent contractor or employee?

Whether a worker is an employee or an independent contractor depends on a range of factors taken together, regardless of whether they are called an independent contractor (for example, in the wording of a contract). For example, you are more likely to be seen to be an independent contractor if your contract indicates that:

- you have control over what, when and how work is done – the greater the control your principal (boss) has, the more likely it is that an employment relationship exists;
- you are running your own business, e.g:
 - you have registered a business or company and have an ABN,
 - you have made a significant investment in your own tools and equipment,
 - your pay is based on a result or the completion of a task rather than the hours you work,
 - you bear commercial risk for the work being done,
 - you can work for more than one principal,
 - you are free to get other people to do the work for you.

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

Disclaimer

This Fact Sheet 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. This Fact Sheet is designed for employees and prospective employees in Victoria, Tasmania and Queensland only. If you are not from these states, you should obtain advice about your specific case as soon as possible.

Note!

Not 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 you are really working as an independent contractor, contact JobWatch, your union, or a lawyer for further assistance.

JobWatch
www.jobwatch.org.au

Melbourne metro: (03) 9662 1933
Qld, Tas and regional Vic: 1800 331 617

Mon-Fri 9am-5pm
and until 8:30pm on Wed
(all times in AEDT)

Signing a contract & keeping notes

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. You should also keep a record of all work performed, including specific dates, locations and tasks.

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.

Occupational health and safety

Occupational health and safety (OHS) laws apply to independent contractors as well as employees. This means that your principal (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 OHS laws.

Superannuation and Taxation

Some independent contractors are entitled to receive superannuation from their principal (boss). If you are not entitled, you will have to arrange your own super contributions.

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 Australian Tax Office for further information.

Unfair dismissal

Unlike employees, independent contractors are not eligible to 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*.

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 or rest breaks. Your pay and conditions are solely a matter for negotiation between you and your principal (boss).

Australian Tax Office

Phone: 13 28 61

Website:

ato.gov.au

Note!
Strict 21-day time limits apply to these claims, so contact JobWatch's Telephone Information Service for information as soon as possible.

Wages and conditions (cont.)

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.

The Fair Work Ombudsman cannot help independent contractors to recover unpaid monies for work performed. If the person refuses to pay you, 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.

Where to get help

JobWatch's free and confidential Telephone Information Service

P: (03) 9662 1933 (Melb Metro), 1800 331 617 (Regional Vic, Qld, Tas)

W: jobwatch.org.au

Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94
Fair Work Commission	1300 799 675
Australian Tax Office	13 28 61
Victorian Civil and Administrative Tribunal (VCAT)	1300 018 228
Queensland Civil and Administrative Tribunal	1300 753 228
Tasmanian Civil and Administrative Tribunal	1800 657 500
Community Legal Centres Australia	02 9264 9595
ACTU Worker Information line (for referral to a union)	1300 362 223
Law Institute of Victoria's Legal Referral Service	03 9607 9311
Queensland Law Society (for referral to a lawyer)	1300 367 757
Law Society of Tasmania (for referral to a lawyer)	03 6234 4133

Note!

Some Victorian contract workers are eligible for sick and carer's pay under a state government pilot scheme. See www.vic.gov.au/sick-pay-guarantee for details.

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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.