

Are Your Workers Employees or Contractors?

It is important that you are clear about the arrangements you have with the people who work for you in order to fully comply with Workers Compensation and Superannuation requirements. Failure to comply may result in a fine.

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 Contractors Are engaged under a contract for service and how they achieve that result is under 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 employer's place of business?
- Does the worker work regular hours set by the employer?
- Does the employer have the 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 majority of the plant and equipment supplied by the employer?
- Is the person engaged for a time-period rather than to produce a particular result?
- Does the employer deduct PAYE tax, superannuation contributions or pay workers' compensation insurance?

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?
- Does the person employ others to complete the work?
- Can the person decide how the work will be undertaken and by whom?
- 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 and provision of an invoice?
- Is the person required to rectify any faults with the performance of the job?
- Does the person carry out the work under a business name, partnership or company structure?

If you're still concerned about the status of your workers, contact the NSW Office of Industrial Relations on 131 628 for further advice.