

INDEPENDENT CONTRACTING TRAPS

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.

Independent contractors may be known by other names including sub-contractors, subbies, contractors, independent agents, consultants, etc.

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, 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.

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.



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 Victorian workers.

Hours:- Monday – Friday 9am-5pm
(Closed Tuesday 12.00noon -2pm)

Phone: (03) 9662 1933 or
1800 331 617

Website: www.jobwatch.org.au

This sheet 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' 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 Victorian Workcover Authority for advice.

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 the OHS Act. Contact Workcover for further information.

Superannuation

Some independent contractors are entitled to receive superannuation from their employers. For clarification, contact the ATO's Superannuation Infoline. 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 unfair or unlawful dismissal claims.

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.

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 the Magistrates' Court or the Victorian Civil and Administrative Tribunal (VCAT). This can be expensive and you should get legal advice prior to taking this step.

For further information, see Job Watch's *Recovery of Wages* booklet.

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 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 legal practitioner.

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

Job Watch Inc:

(Metro) (03) 9662 1933

(Rural) 1800 331 617

Australian Tax Office - 132 861

Fair Work Infoline

(Office of the Fair Work Ombudsman)

13 13 94

Fair Work Australia Helpline

1300 799 675

Federation of Community Legal Centres

for your closest community legal centre

(03) 9654 2204

Small Business Victoria 132 215

Superannuation Hotline 131 020

Victorian Workcover Authority

(03) 9641 1444

Important disclaimer

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