

Taking on workers as contractors

It is becoming more common for employers to move away from permanent employment and to hire staff on either a casual basis or as a contractor.

The main reason for this is the complexity and cost associated with hiring an employee. Many employers believe that calling your workers a “contractor” and insisting on them having an ABN is a way of avoiding the following burdens:

- Superannuation guarantee
- Annual leave, sick leave & long service leave
- Payroll tax (for large employers)
- Workcover insurance
- Public liability/indemnity insurance
- PAYG Withholding

ATO rules about subcontractors

As with all ATO rules, the classification of contractors and employees is not straight forward. However, according to the ATO, the following people can never be contractors and should always be employees:

- Apprentices & trainees
- Company directors
- Labourers & trades assistants

At the other end of the scale, there are contractors who clearly are independent contractors:

- Heavy machinery operators who provide the machinery
- Contractors paid for a fixed job at a fixed price

The ATO has table on its website which summarises the difference between an employee and a contractor. [See link.](#)

Basically, the activities of a contractor look like those of a business, not like those of an employee. If you work full time and are paid on hourly or daily basis then it is very hard to argue that you are a contractor.

Signs that a worker is not a genuine contractor

A worker is probably not a contractor if:

- They get paid by the hour
- They cannot pay another person to work in their place
- The boss chooses the worker’s hours
- The worker wears the employer’s uniform
- The worker carries the employer’s business card

- The employer pays for materials
- Work is performed at the employer's premises
- The employer assigns the work

A worker can still be considered an employee even if they have an ABN, they issue invoices, they work for other bosses, they earn less than 80% from one boss or if subcontractors are standard industry practice.

Avoiding ATO penalties about contractors – employers

So how do you ensure that you have it right?

Basically, you need to make sure your workers are classified correctly. If you have “sub contractors” who are clearly employees under the ATO definition, you need to make sure you are meeting your superannuation, Workcover and PAYG tax obligations.

You need to assess where each contractor fits in the ATO rules. The ATO has a useful resource called the [Employee Contractor Decision Tool](#). We recommend that you use this tool on **each** contractor and keep a record of the decision to support your taxation treatment of each contractor should the ATO ever conduct a review.

Avoiding ATO penalties about contractors – workers

Generally, the worker is unlikely to be in trouble for merely operating as a contractor. The employer has obligations to the worker. The worker only has to ensure they complete their tax return correctly.

The one exception to this is applying for an ABN. If you are not entitled to an ABN, you cannot apply for one. However, it is commonplace for employee-type “contractors” to re-do the ABN application with different answers until the system allows them to apply.

It is an offense to make a false declaration to the ATO and you should not do so lightly.

This information should not be read as personal advice and does not apply to every situation. Should you need advice specific to your circumstances (employer or work) please contact one of our accountants to discuss.