

CONTRACTOR VS EMPLOYEE

Have you really engaged a contractor? Or have you actually hired a new employee? You might not have considered the new rules. You need to be sure of the position. There are different obligations depending on the situation. If you are the “employer” you can be personally liable to who you may have thought was a contractor but is actually an employee if those obligations are not met. If a dispute occurs you need to know your position.

The Test

The test used by the Courts has now changed. The Court used to only consider who had more control to determine if the relationship was an employee or that of a contractor.

The Courts consider 5 key factors in determining if someone is a contractor or an employee:

1. Control; Greater control by the boss indicates employee relationship, whilst an employer exercising little control indicates a contractor;
2. Payment; payment on a regular basis (employee) as opposed to payment for particular service (contractor);
3. Delegation; Contractors can delegate work to others, an employee does the job personally;
4. Commercial risks; contractors carry their own insurance and bears the cost of the defects in their work – usually an employee does not;
5. Responsibility for equipment; contractors pay for their equipment, employees are supplied with equipment or are reimbursed.

This new test blurs the line.

What you need to do

Employers need to exercise caution as failure to do so may result in the employers liability for:

- Superannuation;
- Payroll tax,
- Holiday leave and sick leave;
- Workers compensation;
- Back pay;
- Unfair dismissal;
- Long Service leave.

Employees also need to be aware of their obligations and rights.

There is no obligation for the above to be paid for contractors – but there is for employees.

AustAsia Legal Pty Ltd can assist you with preparing the relevant documents to ensure the relationship is properly recorded.

How can we help you?



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