

Employers Guide to Using Contractors

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Introduction

Purpose of the guide

Many businesses at some stage require additional resources to supplement their workforce and often the best and most flexible option is to hire an independent contractor to fill a short-term requirement such as IT services, additional clerical, or administrative roles or for additional manpower to manage peak periods.

The three main reasons businesses seek to use the services of contractors are:

1. Specific service or operational requirements
2. Labour hire arrangements
3. Outsourcing of business operations and tasks

This guide has been developed as a simple 'how to' guide to managing contractors and contractor arrangements.

So how do you minimise this risk?

Most owners are so busy with the day to day running of their business that they have little time to monitor the technicalities involved with the use of contractors, and many employers mistakenly believe that just because a contractor has an ABN or their own company that they can be used indefinitely as a contractor.

While larger organisations may have a human resource or legal specialist, the advice and processes that should be followed as contained in this guide can be applied by any business owner with the right tools and information.

It is important to understand that if you engage contractors in your business, it is obligatory to understand your requirements under the applicable employment, taxation, and contract law.

This guide has been compiled to provide simple, practical advice to assist employers to identify their requirements and reduce the likelihood of potential breaches of the applicable legislative and legal requirements.

Guide overview

This guide provides comprehensive step by step information about managing the engagement of contract labour and managing their performance.

Each section is outlined with detailed information to utilise in your workplace.

To use this guide most effectively it is important to refer to and follow all steps provided.

This will not only assist in preventing contractor issues from arising but will provide a valuable defence if legal action is taken against the business.

The issues are complex and can have significant legal ramifications if not dealt with correctly.

The contents of the guide should assist you in evaluating your requirements and proceeding to implementing a contractual relationship, but there is no substitute for quality professional advice if you are unsure of some of the technical matters that apply to the use of contractors in the workforce. We cover:

- Why you need an 'arm's length' relationship with your contractor
- What to do about insurance and copyright ownership
- Why you should use an independent Contractor Agreement, and
- How to get the best out of your service providers

Hiring contractors, freelancers, and consultants – rather than taking on full-time or part-time employees – is often the smart business choice. But you need to know what you're doing to avoid any legal issues and protect you and your business from lawsuits.

What is the difference between an independent contractor, freelancer, and consultant?

Independent contractors, freelancers, and consultants all work for businesses (or individuals) on a project-by-project basis, providing services. The terms are often used independently, however, there are (subtle) differences between them:

- **Independent contractors** typically work:
 - To deliver a service or complete a task
 - For one client at a time
 - For an extended period
 - At the client's site
 - Directly or through a contracting company
 - With a strong contract (e.g., non-compete clause)
 - And have professional qualifications

Independent contracting is common in accounting, bookkeeping, engineering, freelance photography, IT, technical service, real estate, sales, truck driving, building, plumbing, electrical work etc.

- **Freelancers** typically work:

- To deliver an output or product
- For multiple clients at the same time
- For short periods
- From home (and maybe with client site visits)
- Directly
- Often without a contract but with agreed Terms
- And with specific experience (but not necessarily professional qualifications)

Freelancing is common in journalism, writing, copywriting, computer programming, software development, graphic design, film production, translation, etc.

- **Consultants** typically work:

- To deliver expert advice
- For one (or more) clients at a time
- For an extended period
- At the client site or from their company offices
- Directly or through a contracting company
- With a strong contract
- And have professional qualifications and specific experience

Consulting is common in financial planning, strategic planning, marketing, research, training, business planning, business review, computing, law, etc.

Defining a Contractor

What is a contractor?

In order to understand your rights and obligations as an employer, you must first understand the key differences between what legally defines a contractor and an employee to your business.

A contractor has a verbal or written contractual relationship with the business and is generally defined by the following key areas:

- **Pay**

A contractor is paid to achieve an agreed result or skilled service and will invoice you for that outcome. Placing a labour only contractor on the payroll may adversely affect their classification as an independent contractor.

- **Work**

A contractor is free to attain and work for other businesses and may do so during the same time periods. They can advertise their services and can subcontract work to others if they choose.

A contractor can set their own hours of work and is generally responsible for their own expenses.

- **Business status**

A contractor has their own business and provides skilled services to other businesses. They have full control of providing their services including timeframes, hours and supplying the materials or tools to achieve the agreed results. A contractor is also free to refuse additional work.

Contractors do not generally hold company management positions or are on the normal payroll, and are not engaged in ongoing, continuous, or repetitive work that could normally be performed by an employee.

- **Equipment**

A contractor often supplies their own tools, equipment, and vehicles, including specialised tools required, and may have their own branding or signage on their uniforms and/or vehicles.

- **Entitlements**

A contractor is not entitled to employee benefits such as annual, sick or long service leave or other employee related benefits.

- **Legal responsibilities**

A contractor bears any risks and costs associated with faulty work, particularly if they are required to be licensed or qualified to perform the work. They do not have a right to claim any employee entitlements from the hirer. A contractor must accommodate their own entitlements and insurances as part of their business. These insurances should be checked by the business hiring the contractor on at least an annual basis, including any required licences.

- **Duration**

A contractor is usually engaged to perform a task or function and not in a long-term relationship.

What is an employee?

The relationship between an employer and employee is more involved and is governed by the Fair Work Act 2009 (Cth).

Usually, a person is defined as an employee by the following:

- **Pay**

An employee earns a fixed wage or salary for the time they have worked, and their employment

conditions are set by an award or agreement.

- **Work**

An employee must perform the work they were employed to do (usually outlined in the position description) and often in a particular way. The employee is usually supervised while performing this work and cannot subcontract any of their duties. An employee will usually only work for the one employer.

- **Business status**

An employee is not required to supply their own tools or resources to perform that work, this is provided by the employer. They have minimal control over their work arrangements including place of work, hours, and timeframes. An employee is recognised as a part of the employer's business and may represent the business when required.

- **Legal responsibilities**

An employee receives paid leave entitlements such as annual, sick, and long service leave and cannot make a profit or loss from the work they provide (aside from bonuses). They are not personally responsible for risks and costs associated with faulty works or services; this is the liability of the employer.

Pitfalls for businesses

Although the descriptions for contractors and employees appear well defined, in some instances it can be hard to differentiate, particularly if a contractor is only working for one business or they have not provided you with an ABN.

It must also be recognised that a worker may meet the requirements of a contractor under the terms of the Fair Work Act 2009 (Cth) however, different deeming rules may apply in relation to taxation and Workplace Health and Safety coverage. In these circumstances it is best to review the definitions, seek further guidance or advice from the Fair Work Ombudsman or an employment law specialist or evaluate your requirements for the work you need performed.

Before deciding whether to engage a contractor or hire an employee, consideration should be given to whether:

- the arrangement needs to be on an ongoing basis or is this a one-off requirement
- the role is a genuine short-term contract or a replacement for an employee role
- the role provides the flexibility and output that you require

Establishing A Contractual Relationship

Checking

Before you decide to hire an employee, you conduct reference checks to determine their suitability to perform the role. Hiring a contractor requires a similar process. When engaging contractors many businesses have no previous experience in using their services or understanding of their skills and quality of work. Engaging contractors without conducting any checks can have the same consequences as hiring an employee without references. Although a contractor is legally responsible their own work, in the event that something goes wrong, the time and money associated with court proceedings and potential damage to your business and reputation can have serious consequences.

Before engaging any contractors to perform work for your business, undertake the necessary steps to ensure they are a reputable, legal business and will provide you with the services you need.

The following key areas should be checked before deciding to engage in a contractual relationship:

- **Licensing and legal requirements**

Is the contractor you are engaging actually licensed to perform the work? If you are engaging a plumber or licensed tradesperson, ask to see a copy of their qualifications. If in doubt, contact the training organisation to check that they were attained. It is not uncommon for apprentices to drop out before completion of their qualifications.

Check their insurances such as personal liability, workers compensation and property damage are up to date and accurate. They should be able to provide a copy of this information to you prior to commencement.

Check that they comply with applicable health and safety laws. This is particularly important if the contractor has subcontracted or engaged staff to work for them. The last thing you want is a serious health and safety breach on your premises, not to mention an injury or death which could have been prevented.

- **Ask for references and work examples**

A contractor should be able to provide references for at least three similar jobs that they have performed. Ask the referees how they sourced the contractor (ascertain if they are friends or a professional relationship). Ask to see at least two examples of their previous work that can be verified by their references.

Ask friends, family, and business associates if they can recommend someone to you and/or about their previous contractor experiences.

Refer to industry resources such as magazines, websites, and forums. These sources of information usually provide contractors who are reputable and may specialise in your industry.

- **Be aware of anything out of the ordinary**

If your contractor provides a home address, multiple phone numbers, has only been in business for a short period, or asks that you pay only in cash, you might want to re-think engaging them.

Be on the lookout for dodgy contractors and don't risk your business.

Creating a Contract

When engaging a contractor, you can choose to have a verbal arrangement or create a specific contract outlining the terms and conditions of their engagement. Contracts are a must in any business relationship, but they're particularly important when engaging independent contractors to provide:

- legal protection
- establish roles and responsibilities
- outline services to be performed

An independent contractor agreement should provide as much protection as possible, while also clearly establishing expectations of both parties. The exact language and sections included in the contract may vary depending on your industry, contractual requirements, and location. A verbal contract can be enforceable by law (provided you can provide evidence of this), however, to protect your business and ensure both parties are aware of their rights, responsibilities and in the event that something goes wrong, it is advisable to create a written contract. Relying solely on the memory of both parties as to the arrangement can be fraught with hazards in a contractual relationship.

While your contract may contain much more information, here are general sections that should be included in any contract between an independent contractor and client.

In some instances, a written contract is required, and this includes the following:

- There is a legal requirement for you to have one (this is necessary in some industries and in some states or territories)
- Where the hirer or contractor's insurance requires it, or insurance is required for the type of work being performed

- Where the price of the contract is large enough that non-payment could have a devastating effect on their business
- If there are quality or legislative requirements on the work performed
- Where either party has confidentiality requirements
- Where the contracts contain terms that allow for termination of the contract in the event that it is breached (such as payment, timeframes etc)

This document does not need to be lengthy or onerous for either party, but at the very least should have the following key details enclosed:

- **Details of the parties to the agreement**

This section sets out the information of each party such as business names, ABN, business owner or contact, address, and signatures.

- **Purpose of the agreement and services or work provided**

Outlines the work that you are engaging the contractor to do. Typically, in a contractual relationship this section would describe the end result that you are seeking.

- **Timeframes for provision of those services or work**

Clearly describes the expected timeframes, particularly if there are multiple stages to achieve the end result.

- **Payment arrangements**

Sets out the requirements such as timeframes and how payment will be made i.e., cheque, electronic transfer etc.

- **Expenses**

Sets out any agreed reimbursement for expense related items such as meals and travel.

- **Nature of the relationship**

Outlines that the relationship is of a true contracting nature and the contractor is not in partnership or an employee of the hirer.

- **Insurance**

Sets out insurance policies and obligations for both parties while performing the work and should include staffing or subcontractors if applicable.

- **Responsibilities for faults**

If the work is incomplete, faulty, or not to an appropriate standard, this section specifies who will

be responsible, and what action will be taken to remedy the situation. Be mindful that these circumstances could possibly include subcontractors.

- **Dispute resolution**

If a dispute arises, this section will outline the action that will be taken by both parties to resolve the dispute. It is important that both parties carefully consider and document the required dispute resolution process, as this is predominately the circumstance where you would refer back to a written contract.

- **Contract termination**

In the event that the dispute resolution process fails, this section outlines how the contract can be terminated and the responsibilities or consequences for each party.

There may be additional information which is appropriate to include in your contract. Depending on your business needs and industry this can include:

- **Restricted work** – prevents the contractor from working for other clients during the period of the contract
- **Indemnity** – details compensation for the hirer as a result of any loss from the work the contractor has performed
- **Confidentiality** – protects sensitive information of both parties
- **Intellectual property** – sets out the rights for the work you have created (such as copyright)
- **Limited trade** – limits the ability to trade with clients for a specified time period
- **Subcontracting arrangements** – outlines whether contractors will be and can be used for the work performed
- **Variations** – defines the instances where the contract can be varied (if at all)
- **Progress payments (if suitable)** must include amounts and milestones, completion dates or required results.
- **GST** – the contract should state whether GST is included in the contract or not, and where GST is payable it is preferred to include it in the contract terms, if GST is not mentioned in the contract terms, at law it is deemed to be included.

Negotiating the Contract

Often with a contracting arrangement a party will have certain requirements or areas they need to negotiate to ensure the result of the contract is attained in a way that suits both parties. In this instance it is necessary to effectively negotiate the terms and conditions of the contract.

Here are some tips to ensure your negotiation, contract period and end results suit your needs.

- **Prepare for the negotiation**

Before your negotiation meeting it is important to properly prepare. This includes reviewing the contract terms and conditions and ensuring they are legal. It is beneficial to seek legal advice on the nature of your contract before signing and involve other professionals if appropriate such as industry associations. Be aware of the sections in your contract that can be negotiated and the areas that have legal implications. Keep all information pertaining to the contract and negotiation together and make notes of things to remember and a list of items to discuss in the meeting.

This will ensure the meeting is still effective if negotiations stall or you need to get back on track.

It is beneficial to do some research on the company and their competitors before the negotiation, so you have an understanding of the services they provide and what is standard within the market.

Determine the areas you can negotiate on, so you have extra bargaining power if you need it and remember that a negotiation requires give and take.

With most negotiations both parties are open to seeking a comfortable resolution so approach the meeting with positivity, an open mind and always remain professional even if the other party does not.

- **During the negotiation**

When it comes time to meet and discuss the contract, ensure you are holding the negotiation with all relevant parties and involve other stakeholders if need be. It may be beneficial to create an agenda of the items you wish to discuss and providing a copy to the other party. This ensures they also have time to prepare, and all items can be discussed and resolved within the meeting timeframe.

Bring all relevant documentation including notes and refer to these often to keep the meeting on track. When negotiating, remember to be clear and professional about your wants and needs, but do not be afraid to ask for further consideration time if you require it. Ensure you take a list of the decisions and agreements made within the meeting which be referred to again if need be.

- **Before you sign**

Make sure that you understand the terms of the contract and seek legal advice if unsure of any of the content or terms of the contract.

Once the negotiation has been finalised, update the contract, and keep copies of the document you have signed, and the finalised version signed by contractor.

Congratulations! You now have now engaged a contractor.

Hirer Responsibilities

At the beginning of a contract, it is important for hirers or principals to understand their obligations and responsibilities to contractors and any subcontractors that they engage.

In a workplace, contractors have many of the same rights and responsibilities of employees. The Federal Work Health and Safety Legislation (applies to all states and territory's except VIC & WA) and the 2 separate state legislations of VIC & WA includes contractors with employees under the term 'workers'. For businesses this means that a contractor is entitled to the same protections and duty of care as any employee when it comes to workplace health and safety.

This includes inductions, following safe work methods, rights to a safe workplace and all aspects of workplace health and safety.

As a hirer you can also be liable if there is a breach of health and safety, and there are successful cases of injured workers pursuing damages from both the business they are employed by and the business they are working for at the time of the injury.

In addition, the contractor also has obligations to the hirer and the workplace including reporting any risks to health and safety and managing their own employees.

When it comes to health and safety, ensure all contractors are treated like your own employees.

In addition to health and safety there are other areas of accountability a hirer may have when engaging a contractor?

Usually, contractors are responsible for their own taxation and withhold some of the amount you pay for taxation purposes.

However, if a contractor does not provide you with their own ABN number, or you enter into a voluntary agreement to withhold tax, the hirer becomes responsible for paying tax for that contractor.

In this instance you are required to withhold the highest payment amount of tax (46.5% of your payments) and a Medicare levy and report and pay the total amount each year at tax time.

In some instances, hirers are also responsible for paying a contractor's superannuation.

Generally, superannuation would be paid by the hirer if the contractor is engaged for their personal skills and expertise and the contract is for labour only, meaning that the work cannot be delegated to another contractor. The ATO has a contractor tool available to assist.

<https://www.ato.gov.au/calculators-and-tools/employee-or-contractor/>

This is particularly clear when a contractor is paid for the hours that they work for the hirer, rather than to achieve a specific result.

Contractors also have the same rights and responsibilities as employees when it comes to anti-discrimination, adverse action, and bullying legislation.

This means that as a hirer you cannot discriminate against a contractor, vary a contract or in any way treat a contractor less favourably on the grounds of race, religion, sex, age, colour, disability, marital status, age, or sexual preference.

You also have an obligation to ensure you do not harass or bully a contractor or allow them to be harassed or bullied within your workplace.

Contractor Responsibilities

Typically, hirers will engage contractors not only for the work they complete, but also for the ease in engaging them to complete that work. In most instances the onus is on the contractor to provide a service and manage all aspects of their own business.

A contractor is responsible for paying their own tax and will withhold a certain percentage from each payment received to pay as a lump sum at tax time. If the contractor has a GST turnover of \$75,000 or more per annum, they are also required to register for GST and will charge an additional 10% on your invoice.

Generally, a contractor is also responsible for paying their own superannuation (except in the instance outlined in hirer responsibilities) and this is included in the amount invoiced to businesses.

Contractors are also responsible for their own insurance, and this can include professional indemnity, public liability, workers compensation and damage to or loss of property.

Before engaging a contractor, ensure you are provided with a statement of their current insurances to protect your business and assets.

Maintaining a Contractual Relationship

Once you have engaged a contractor it is time to consider how you will orientate them to your business, ensure they are working safely, assess their performance or outcomes, adjust the contract if needed and arrange their payments. Maintaining open levels of communication with regular monitoring will ensure that your contracting arrangement is mutually beneficial.

Induction

Under workplace health and safety, anti-discrimination and bullying and harassment laws a contractor engaged to work in your workplace is afforded the same rights and responsibilities as any of your employees.

Meetings and reviews

It is prudent to monitor the performance and status of independent contractors, and if engaged for extended periods, regular review dates should be agreed upon and set between the parties.

At these reviews the overall performance of the contractor and any of his employees (if applicable) should be discussed, including the requirements of the principal or hirer in relation to future work and expectations and any issues the contractor may have with the performance of the contract.

Performance and issue resolution

Where performance issues are identified either through the review process, or as a result of an incident or action, it is important to deal with them as expeditiously as possible and to deal with them in the right manner to minimise the threat of the issues progressing to a breach of contract by either or both parties.

Generally, the best method to deal with a performance issue or potential breach is to refer to the dispute mechanism contained in the contract and follow the dispute resolution clause steps.

If this fails to resolve the matters at conflict between the parties before legal action is contemplated the parties may agree to have the matter heard by an independent Mediator/Arbitrator.

The best method of resolving this type of dispute is through a well-written and agreed dispute settlement clause contained in a written contract, good communication and the willingness of both parties to identify the issues and attempt to resolve them in a non-confrontational manner.

Planning

Before engaging an independent contractor or contractors, define:

- The specific tasks to be performed
- The projected costs and benefits of a contractor as opposed to the use of existing employees or casual labour
- The nature and duration of the work
- The impact that introducing an independent contractor into the current workplace may have on existing staff and operations
- Supervisory and reporting structures
- Goals and measurement criteria

Payment and Invoices

A payment schedule should be included in the contract between the parties, and this schedule should outline the agreed rates of remuneration for the services performed e.g., hourly, weekly, monthly, for work performed with specific results.

Application of relevant workplace policies and procedures

Although contractors are not employees, they are required to abide by workplace policies and procedures which may be applicable to their role.

Contractors who work in locations with employees of the business are required to adhere to general workplace policies such as:

- Bullying and harassment
- Workplace health and safety
- Alcohol and other drugs

If you intend to use a contractor, either stipulate in the contract the specific workplace policies that you require to be adhered to or provide the contractor with the policies and request that he/she acknowledge that he/she has read and understood these policies and will abide by them.

Protecting Your Business Legally

Legal requirements for business

Failure to properly categorise a contractor may result in their role being classified as an employee, the effects of a decision of this nature could bring the following penalties:

- Taxation breaches and penalties of non-compliance
- Unfair dismissal or Adverse Action (General Protection) claims
- Claims for employee entitlements such as annual, long service leave, overtime, and penalty rates
- Workcover claims
- Sham contracting prosecutions and penalties

To avert complications, legal challenges and disputes it is recommended to:

- Accurately record dealings with the contractor prior to reaching agreement.
- Where possible have a written contract and keep copies of this and any other documents.

- Ensure that in the contract (where personal labour is supplied) that it states that the relationship between the parties is that of Principal and Independent Contractor and that there is no employment relationship.
- A start and finish date, all work to be performed, schedule of fees, policies, and procedures to be adhered to, method of payment, taxation treatment and confidentiality requirements should be clearly set out in the contract.
- A dispute clause and variation clause should be negotiated and included in the contract.
- Depending upon the complexity of the contract it may be practical to seek professional advice to draft the contract and ensure that you have included all the required information into the terms of the contract.
- State in the contract whether GST is included or not.
- Define the terms of payment either full term upon completion, or if progress payments or instalments are agreed, clearly describe the trigger points and measures to enable payment.
- Define the method of payment and, if by invoice, describe what each invoice should contain.
- Define any intellectual property issues and who owns what intellectual property before, during and after the contract.
- Define confidentiality requirements such as client lists or software programs.
- Define and cover any exclusivity or break free clauses in the contract.

Where a contract is solely for the provision of services, care must be taken to ensure that the role and services reflect a true contractual relationship, as these relationships are coming under increased scrutiny.

Contractors may have the right to contest the terms of a contract and claim that it is unfair or harsh under the terms of the Independent Contractors Act 2006, and the Australian Consumer Law, so it is important for all parties to be bound by the contract to negotiate and agree on the terms of the contract prior to its commencement.

Legal requirements for contractors

Contractors should ensure that they:

- Keep records of all events, meetings and discussions prior to the contract commencing
- Ensure that the written contract adequately reflects the arrangement between you and the principal and clearly sets out the scope of work required and the payment and taxation issues applicable.

- Have all licenses and qualifications up to date and ensure that any employees that you engage also have these details current and check them at least annually.
- Ensure that any insurances adequately cover the work and workers and determine who covers workers for accident and injury.
- Establish clear indemnity insurance coverage to cover negligence or other circumstances which the principal may require, and public liability insurance where required.
- Ensure that they are trained and qualified to carry out the work that is agreed to be performed, and that any staff that they employ or engage as contractors are also suitably trained and qualified.
- Keep any vehicles and equipment in a safe and working condition.
- Record any contract variations and get them in writing where possible.
- Have in place suitable Workplace Health and Safety Policies and induct any additional workers in these policies and procedures and on the specifics of any particular job or job site.
- Establish who you are entering the contract with e.g., a partnership, trustee or individual.

Sham Contracting

Employers cannot disguise an employment relationship as an independent contracting relationship to avoid paying employee entitlements that they would normally be entitled to under the National Employment Standards (NES) an applicable industrial Modern Award or Enterprise Bargaining Agreement such as superannuation, annual leave, sick leave, long service leave, worker's compensation, and some applicable employee related taxes or:

- instruct an employee that they are an independent contractor
- dismiss an employee in order to put them back on as an independent contractor performing a similar role
- mislead an employee (or former employee) so that they are persuaded to perform similar work as an independent contractor.

There are particular provisions which cover Sham Contracting contained in the Fair Work Act 2009 (Cth), and if a contravention is found to have occurred, significant financial penalties can be ordered by the Federal Court or the Federal Circuit Court.

Use of Labour Hire Contractors

A number of recent decisions in relation to casual employment and the use of Labour Hire firms who contract out their employees to businesses requiring long term casual labour have caused a level of concern in business circles recently.

The recent decision by the Full Federal Court in *Workpac vs Skene* considered the application by Skene that because he was a fly-in fly-out worker with regular hours and set shifts, he was essentially not a casual employee, and therefore entitled to payment of annual leave upon his termination. The decision was overturned by the Full Bench of the High Court on 4 August 2021.

In summary

The judgment in *WorkPac Pty Ltd v Rossato* [2021] HCA 23, unanimously finding that casual employment is characterised by no firm advance commitment as to duration or hours of work, with particular emphasis on the contractual arrangements between the parties.

Currently the Fair Work Act 2009 Cth states that:

1. employers can engage long term casual employees which is defined as an employee who has been employed on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months (from the Fair Work Act); and
2. each occasion that a casual employee works is viewed as a separate engagement; casual employees may be engaged from week to week, day to day, shift to shift, hour to hour or for any other agreed short period (from the common law)

These definitions do not make casual usage much clearer, but they do define certain boundaries that over time appear to have been loosely interpreted in some industries.

Long term casuals are also be entitled to Long Service Leave, unpaid sick days, and access to Unfair Dismissal laws protection which, when added together with the 25% casual loading, they attract, may be becoming more expensive than other forms of employment.

Employers may consider reviewing the casual employee structures they currently have in place and assessing whether long-term casual employees could be converted to permanent part time employees to minimise possible future claims.

In addition to the case detailed above another piece of legislation which may affect the use of Labour hire contractors in the State of Queensland is the new *Labour Hire Licensing Act 2017 (Qld)* (Act) which commenced on 16 April 2018 and introduces a mandatory licensing regime for providers of labour hire services in Queensland.

This Act is likely to impact entities in a broad range of sectors not commonly associated with labour hire, including government.

The Act was introduced in response to evidence of exploitation of workers in the labour hire industry documented in a Report of the Queensland Finance and Administration Committee.

The stated purposes of the Act are to:

- protect workers from exploitation by providers of labour hire services; and
- promote the integrity of the labour hire industry.

Similar acts are in place in South Australia and Victoria.

Ending A Contractual Relationship

Completion

The initial contract between the parties should clearly describe the duration of the contract, the task, or tasks to be completed and the terms of measurement required to assess successful completion.

If the decision has been taken to end the contract the parties must apply and meet the notification requirements and notice periods where they exist in the contract.

Other ways to end a contractual relationship include:

1. Where the parties mutually agree to terminate or end the contract where the work has been successfully performed under the terms of the contract.
2. The contract terms have expired, or the work has been satisfactorily completed or there is no longer a requirement for the work.
3. Where either party provides the required notice as provided in the notice clause in the contract.
4. Where there has been a breach in the terms of the contract by one or more of the parties.
5. Through frustration of the contract (usually through non-deliberate actions and beyond the control of the parties).

Unsatisfactory work

The dispute settlement clause is used to settle any disagreements during the term of the contract.

The contractor must be notified of the reasons that the work is deemed to be unsatisfactory and be given the opportunity to rectify the work to the client's satisfaction and timeframe.

If there is a pattern of unsatisfactory work and the contractor fails to meet the requirements of the contract the contract may be terminated, but it is essential to follow the disputes clause, notification clause, and to be aware of potential action if the termination is disputed.

Unfinished work

As with unsatisfactory work, in the case of unfinished work the dispute settlement clause is used to settle any disagreements during the term of the contract.

The contractor must be notified of the reasons that the work is deemed to be unfinished or not at the standard required and be given the opportunity to rectify the work to the client's satisfaction and timeframe.

If these terms cannot be met the contract may be terminated, but it is essential to follow the disputes clause, notification clause, and to be aware of potential action if the termination is disputed.

Quick Tips

- Just because a contractor has an ABN does not guarantee their status as an independent contractor, especially where the role is a contract for service.
- The taxation savings and benefits of contractual relationships have been diluted over the years, and a full cost benefit analysis of a contractual role as opposed to a part time, permanent part time or full-time employee should be carried out before engaging a contractor.
- The fines for sham contracting arrangements are generally made against the employer and can be large financial penalties.
- Some Federal, State and Territory laws provide for self-employed contractors to be classed as employees when engaged in certain industries and activities such as the Building and Construction Industry, and the extension of other special provisions relating to employment categories and benefits in the Cleaning, Transport and the Textile Clothing and Footwear industries. These industries have long histories of contractual arrangements and applicable law and practices which should be researched when considering engaging contractors.
- Continued use of contractors may alter their deemed or assessable status.
- Although not entitled to parental leave, independent contractors remain protected from discrimination arising from pregnancy or family responsibilities in the workforce and discrimination and bullying in general.

- Contractors are able to challenge unfair or unconscionable conduct or contracts under Australian Consumer Law.

Conclusion

What are the pros and cons of hiring an independent contractor?

There are many pros and cons of using independent contractors. But here are what we believe are the 3 most important pros and 3 most important cons.

Pros of using independent contractors:

- Potential cost savings, including office space, equipment, benefits, etc.
- Staffing flexibility and ability to hire on an as-needed basis, and
- Access to specialist skills, without the need for additional training

Cons of using independent contractors:

- Less direct control over priorities, timing, and methods
- Less certainty of availability, and
- Loss of skills because they are not transferred to employees of the client

The use of independent contractors can be a useful and cost-effective method of supplementing a workforce for short-term periods.

Before any decision is taken to engage a contractor, a detailed review should be conducted to ascertain the benefits of the decision against the option of employing a casual, permanent part time or permanent employee.

The industrial relations, taxation, work health and safety and superannuation laws have put these relationships under intense scrutiny (particularly contracts for services only) and there have been some recent cases where employers found to have entered into sham contract have been fined large amounts of money for their actions.

It is crucial that any contractual relationship that you enter into is well planned, documented and reviewed regularly, and if you are unsure as to the implications or obligations that may apply, it is recommended that you seek professional advice before entering into a formal contract.

The contract process is a great opportunity to establish a positive working relationship with your contractor. By aligning expectations, they can meet your needs and have a clear idea of what they expect of you. Also, most importantly what you can expect of them.

Once you're both on the same page, you can move forward with confidence.

Table of Amendments

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