

CONTRACTORS - are you at risk?

Many businesses pay staff who are really employees as contractors. By doing so they put themselves at risk of running afoul of the ATO, with the possibility of having to pay for taxation liabilities, taxation penalties, as well as superannuation issues.

The attached quiz is designed to establish if your contractors are employees or contractors.

If your contractor is an employee you must comply with various Acts, such as the Workplace Relations Act, and the Superannuation Guarantee Act, as well as various state legislation relating to WorkCover and long service leave.

Some members will say that they cannot get staff if they pay them as employees rather than contractors, as the pay rate as an employee is insufficient. If you want to keep them working for you, help them to become true independent contractors. Refer them to your accountant or lawyer so that they can get good advice about what is best for their particular needs; employee or independent contractor.

You must tell them that as a responsible citizen you cannot be a party to breaking state law. If you have questions about this or about other HR/IR matters, please feel free to contact me at gerard@pn.net.au

This article is a guide only and does not purport to be comprehensive or to constitute legal advice. It should not be relied upon as anything other than a guide. Readers should also note that independent contractor test is different under taxation and employment laws. ■

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Gerard Nelson

TAKE THE TEST!

Tick either yes or no to the following:

	YES	NO
1. Do you tell the contractor when to start and finish work?	<input type="checkbox"/>	<input type="checkbox"/>
2. Must the contractor seek your approval for absences from the workplace?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you require you contractors to wear uniforms or other distinctive to your business identification?	<input type="checkbox"/>	<input type="checkbox"/>
4. Does the contractor decide to undertake work for you based upon whether it is profitable to the contractor?	<input type="checkbox"/>	<input type="checkbox"/>
5. Can the contractor refuse work from you?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the contractor decide how much work to do in a day?	<input type="checkbox"/>	<input type="checkbox"/>
7. Does the contractor have to purchase their own equipment?	<input type="checkbox"/>	<input type="checkbox"/>
8. Does the contractor meet all expenses associated with the performance of their work?	<input type="checkbox"/>	<input type="checkbox"/>
9. Is the contractor paid the same amount eg. each week?	<input type="checkbox"/>	<input type="checkbox"/>
10. Can you dismiss the contractor?	<input type="checkbox"/>	<input type="checkbox"/>
11. Can the contractor generate goodwill for their business not your business?	<input type="checkbox"/>	<input type="checkbox"/>
12. Is the contractor a corporation?	<input type="checkbox"/>	<input type="checkbox"/>
13. Can the contractor delegate work to your employees?	<input type="checkbox"/>	<input type="checkbox"/>
14. Do you pay the contractor annual leave or sick leave?	<input type="checkbox"/>	<input type="checkbox"/>

If you answered yes to questions 1, 2, 3, 9, 10, 11 & 12 and no to questions 4, 5, 6, 7, 8, 13 & 14 then on the balance of probabilities your contractor is an employee.

THE ANSWERS: