PEARLS OF WISDOM

Employee or Contractor Indicators

Key indicators of whether a relationship is that of an employee or independent contractor include:

Indicators	Independent Contractor	Employee
Whether control is exercised over the manner in which the work was performed	The payer has a right to specify how the contracted services are to be performed, but such control must be in the terms of the contract; otherwise the contractor is free to exercise their discretion (subject to any terms implied by law)	Is told work is to be done, how and where it is to be done
Whether the worker operates on their own account or in the business of the payer	Is a person who carries on a business of their own	Is a person who serves an employer in the employer's business
Whether the substance of the contract is to achieve a specified result	Is free to employ own means to achieve the contractually specified outcome. Provide tax invoice for services rendered.	Generally work standard or set hours – work to a job description Are paid an hourly rate
Whether the work can be delegated or subcontracted	Has power to delegate the work to others (can be with the approval or consent of the principal) unless the contract expressly requires the service provider personally to perform the services	Is contractually required to personally perform the work
Whether the worker bears little or no risk of the costs arising out of injury or defect in carrying out their work	Bears the risk and responsibility for any poor work or injury sustained in the performance of work. Carry own insurance and indemnity policies	Bears little or no risk of the costs arising out of injury or defect in carrying out their work
Whether the worker provides their own tools and equipment and pays business expenses.	Provides own assets, equipment and the incurring of expenses and other overheads	Is often reimbursed (or receives an allowance) for expenses incurred in the course of employment

Deeming a person an 'independent contractor' in a contract must be considered with all other terms of the contract. The totality of the relationship between the parties must be considered to determine whether, on balance, the worker is an employee or independent contractor.