

Employee or Contractor?

A word of advice – don't make the mistake of paying someone as a contractor if they really fall under the category of employee.

This can be a trap that can cause you serious problems later.

They are probably an employee if:

- the intention of the parties is to form an employment relationship, and this is shown in any written agreement or correspondence and/or by the behaviour of the parties
- the employer or their agent has the power to hire and fire
- the employer or their agent controls the hours worked
- the employer makes the profit or loss from the enterprise
- the employer deducts ACC premiums and PAYE tax on behalf of the employee
- the employer supplies materials for the work
- the employer owns or leases the equipment needed

They are probably a contractor if:

- the intention of the parties to the contract is not to form an employment relationship, and the actual nature of the relationship reflects this
- the contractor controls how and when the job is done
- payment is made in a lump sum at the end of a job, or in instalments as progress is made on the job
- the contractor can choose who does the job and can hire other people without approval from the other party
- the contractor pays any tax, ACC and insurance directly
- the contractor can make a profit or suffer a loss directly
- the contractor supplies equipment and materials

Still unsure if they're an employee or contractor?

Sometimes it's still not entirely clear. But you can get into trouble if:

- someone is taken on as a self-employed contractor, but they think they're really an employee; or, more typically
- during the course of either an investigation by a Labour Inspector, in the course of mediation or before the Employment Relations Authority, where there is an action, say to recover arrears of wages or holiday pay, the actual nature of the relationship sometimes comes into question.

We suggest you err on the side of caution and if there's any doubt make them an employee.

Casual workers

Casual workers don't work fixed or regular hours and don't have an ongoing obligation to work for the employer.

They work "on call" when you need them.

Casual workers can be paid 8% on top of their wages as holiday pay each time they receive their wages.

For these employees, the arrangement must be by genuine agreement and be included in the employment agreement, and the 8% annual holiday pay should appear as a separate and identifiable amount on the employee's pay slip.

On the termination of the employment relationship, no additional pay for annual holidays is due.

If an employee agrees to enter into such an arrangement, the employer would be wise to keep it under review to see whether a regular cycle of work has developed. If this occurs, the employer and employee should enter into a new employment agreement that provides for annual holidays to accrue, and that removes the 8% payment.

Casual workers are entitled to:

- Sick leave (if still working for the employer after six months)
- Bereavement leave (if still working for the employer after six months)
- Statutory holidays (immediately)

A word of caution...

If you hire an employee as a casual worker when in fact they are working to a regular pattern of hours and they stay longer than a year, the employee is entitled to 4 weeks paid holiday. Even though you may have paid the employee 8% all year, you could still end up paying them for an additional 4 weeks holidays if they challenge it!

We suggest you err on the side of caution and if there's any doubt make them part time.

Part time workers

A part-time worker is someone who works for you on a regular basis but the hours can be either the same or varied up to 30 hours per week.

They have the same rights as full-time employees. They are entitled to 4 weeks annual leave.