

Employee vs Independent Contractor

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What's the difference between an employee and an independent contractor?

There are many differences between independent contractors and employees, but sometimes it is hard to differentiate.

In order to make the correct decision about how to engage a worker, businesses must focus on the real nature of the working relationship.

An employee is anyone who has agreed to be employed, under a contract of service, to work for some form of payment. This can include wages, salary, commission and piece rates. Employees must get:

- At least the minimum wage
- Holiday and leave entitlements
- A written employment agreement

Employees also have extra rights like the right to take a personal grievance. An employer must keep employee records such as an employment agreement and wage-keeping details.

An independent contractor is a person engaged by a principal (the other party) to perform services under a contract for services (commonly called an independent contractor agreement). Contractors are self-employed. They earn an income by invoicing the principal for their services. A contractor must pay their own tax (apart from withholding tax) and is responsible to pay ACC levies.

Independent contractors are not covered by the Employment Relations Act 2000. Contractors are, however, protected under the Health and Safety at Work Act 2015 and can take commercial action against a principal for breach of contract.

Why do I need to know the difference between an employee and an independent contractor?

If a business hires someone as an independent contractor when the true nature of the relationship is

that of employment, they may be held liable for extra costs including:

- Back payment of wages
- Holiday and other leave entitlements
- Compensation if the engagement was terminated or changed without a process

Employers may also be at risk of being issued with penalties from Inland Revenue (IRD) and/or the Employment Relations Authority.

Further Information

On the following page is a table which provides further details.

The table and this guidance note provides a brief overview of the main issues. If you believe any of these may impact on your business, please contact 0800 675 697 or email advice@employsure.co.nz for further information.

Indicator	Employee	Independent contractor
Degree of control over how work is performed	Performs work under the direction and control of their employer on an ongoing basis	Has a high level of control in how the work is done
Hours of work	Generally, works standard or set hours (note: a casual employee's hours may vary from week to week)	An independent contractor decides what hours to work to complete the specific task
Expectation of work	Usually has an ongoing expectation of work (note: some employees may be engaged for a specific task or specific period).	Usually engaged for a specific task
Risk	Bears no financial risk (this is the responsibility of their employer)	Bears the risk for making a profit or loss on each task. Usually bears responsibility and liability for poor work or injury sustained while performing the task. As such, contractors generally have their own insurance policy.
Tools and equipment	Tools and equipment are generally provided by the employer or a tool allowance is provided	Uses their own tools and equipment (note: alternative arrangements may be made within a contract for services)
Tax	Has income tax deducted by their employer	Pays their own tax (aside from certain withholding tax) and GST to the Inland Revenue Department
Method of payment	Paid regularly (for example, weekly/fortnightly/monthly)	Submits an invoice for work completed or is paid at the end of the contract or project
Leave	Entitled to receive paid leave (for example, annual leave, sick leave, bereavement leave, and public holidays.)	Does not receive paid leave
Employment agreement	An employee must have an employment agreement in writing	A contractor has a 'contract for services' with a principal, rather than an employment agreement. A contractor should have the ability to understand the contract and have time to seek independent advice. Extra care should be taken where English is not the contractor's first language.
ACC	An employer looks after an employee's ACC levies	A contractor is responsible for paying their own ACC levies
Team integration	An employee would be part of the company 'team' eg invited to company events or wearing the uniform	A contractor is less likely to be integrated into the team eg not invited to company events or wearing the uniform
Minimum wage	An employee must be paid at least the applicable minimum wage for all hours worked	A contractor can be paid whatever rate is agreed to
Have employees do the work	An employee is required to perform their job personally and is not able to engage anyone to replace them at work	A contractor can often get someone else to do the work instead of him/her either by subcontracting the work, or employing their own staff
Invoices	An employee usually gets paid automatically and receives a pay slip	A contractor usually issues invoices setting out their fees or charges in order to get paid
Mainly working for one entity	An employee mainly only has one employer	A contractor may work for multiple principals at the same time eg a builder having contracts to do work for Company 'A', Company 'B' and Company 'C'
Supervision and direction	An employee follows the direction of the employer and is usually under the supervision of a senior colleague.	A contractor has their own 'plan' of what work to do each day and at what site to work at. Usually the contractor is a specialist and does not require close supervision or to be instructed how to do their job