

Guidance for labour hire providers: engaging workers as independent contractors

This guide helps ensure that when engaging workers as independent contractors, you:

- comply with your legal obligations
- do not engage in sham contracting
- keep your labour hire licence.

This guidance material has been updated to reflect the new definition of employment in the [Fair Work Act 2009 \(Cth\)](#) (Fair Work Act) that commenced on 26 August 2024.

EMPLOYEE OR INDEPENDENT CONTRACTOR?

Why it's important to correctly classify your workers

Misclassification of employees, sham contracting, and associated non-compliance causes significant harm:

- to workers, by undercutting minimum wages, and the perceived ability to avoid other legal obligations such as superannuation and leave entitlements
- to the community, by avoiding taxation obligations such as PAYG withholding and payroll tax, and failing to pay adequate premiums for workers' compensation
- to compliant businesses, who are unfairly disadvantaged when competing against non-compliant providers who have unlawfully lowered their costs.

Some providers are motivated to incorrectly engage workers as independent contractors because they believe it is cheaper.

This is misconceived; in labour hire, a provider's legal obligations for workers engaged as independent contractors are largely the same as their legal obligations for employees.

Key differences between employees and independent contractors

Genuine independent contractors operate their own business, generally with a high level of autonomy. Typically, genuine independent contractors contract their labour/services to another person or business, called a 'principal', and they remain separate from the principal/do not form part of the principal's business.

In contrast, employees provide their personal services and work as part of their employer's business.

Some important considerations:

- How much control do you and/or the host have? Can you set hours, placements, give directions – including through the host? If so, this points to employment.
- Are your workers genuinely conducting their own independent businesses, or are they serving in your business and/or your host's business? If the latter, this points to employment.
- Using labels such as 'independent contractor' and 'principal' in a contract does not determine the actual legal relationship between the parties.
- Apprentices and trainees are always employees, never independent contractors.



The whole of relationship test

Since 26 August 2024, under the Fair Work Act, to determine whether a worker is an employee or independent contractor, you must have regard to the real substance, practical reality and true nature of the relationship between you and the worker, including:

- the totality of the relationship,
- the terms of the contract, which can be written, oral or a mix of both, and
- how the contract is performed in practice.

The Fair Work Ombudsman (FWO) calls this definition of employment the '[whole of relationship test](#)'.

With some limited exceptions, this test applies for all purposes under the Fair Work Act. For example, this test applies whether a worker is:

- entitled to the [National Employment Standards](#)
- covered by an [award](#) or [enterprise agreement](#)
- covered by [unfair dismissal](#) laws.

The start of relationship test

Prior to 26 August 2024, the test under the Fair Work Act was different. Back then, to determine whether a worker was an employee or independent contractor, the focus was instead on the terms of the contract between the worker and the business.

The FWO has called this definition of employment the '[start of relationship test](#)'.

Even though this test no longer applies under the Fair Work Act, it still applies for some other workplace relations matters.

The technical reason for this is because the start of relationship test comes from the 'common law' (sometimes called 'judge-made law'). When the new definition of employment was included in the Fair Work Act, it replaced the start of relationship test for Fair Work Act purposes, but not for other purposes.

Some examples of where the start of relationship test continues to apply are:

- the [Long Service Leave Act 2018 \(Vic\)](#)
- the [Long Service Benefits Portability Act 2018 \(Vic\)](#)
- the [Fair Entitlements Guarantee \(FEG\) scheme](#).

For more information about correctly classifying workers, please see the FWO's [guidance on independent contractors](#) or [contact FWO](#).

If you're still unsure, you should consider independent legal advice.

Additional tests in other laws

Some other laws, such as laws dealing with superannuation, payroll tax, and workers' compensation laws, deal with the difference between employees and independent contractors in their own way.

Also, for some laws, there are special rules for independent contractors in labour hire. For example, while there is no general requirement to withhold tax from payments to independent contractors, in labour hire, PAYG withholding laws apply to independent contractors.

SHAM CONTRACTING

What is sham contracting?

Under the Fair Work Act, it's unlawful for an employer to:

- deliberately make a false representation to an employee that they are an independent contractor
- dismiss an employee and re-engage them as an independent contractor to do the same job
- knowingly make a false statement to an employee to persuade them to become an independent contractor.

Providers who engage in sham contracting may have their labour hire licence cancelled and may also face significant penalties under the Fair Work Act.

For more information, please see:

- the FWO's [guidance on sham contracting](#)
- the Fair Work Commission's (FWC) [General protections benchbook](#).

Sham contracting is illegal

LHA takes sham contracting seriously. Providers who are found to engage in sham contracting will face compliance and enforcement action by LHA.

LEGAL OBLIGATIONS FOR INDEPENDENT CONTRACTORS

Unfair contract laws

Independent contractors can apply to the FWC or a court for assistance with unfair contract terms.

Similar work, for lower pay is not ok

An unfair contract term may arise if an independent contractor is paid less than an employee doing similar work.

LHA routinely checks how much providers are paying their independent contractors, and how that compares to the relevant award rates.

If an independent contractor is worse off than employees, this is treated as a significant risk indicator and LHA may examine the arrangement more closely.

New unfair contracts jurisdiction in the FWC

From 26 August 2024, independent contractors earning less than the 'contractor high income threshold' (from 1 July 2025, \$183,100 per year) can apply to the FWC for assistance with unfair contract terms.

To learn more about the FWC's unfair contracts jurisdiction, read the FWC's [guidance on independent contractor disputes about unfair contract terms](#).

Dealing with unfair contracts in court

For independent contractors earning above the contractor high income threshold, or those who entered their contracts before 26 August 2024, they can apply to a court for assistance under the [Independent Contractors Act 2006 \(Cth\)](#).

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Independent contractors can also apply to a court or tribunal for assistance with unfair contract terms in standard form contracts under the [Australian Consumer Law](#) (ACL). A regulator may also take compliance action under the ACL, which could result in substantial penalties.

For more information about unfair contracts under the ACL, read Consumer Affairs Victoria's [guidance on unfair contract terms](#).

Superannuation

If you pay independent contractors mainly for their labour, they are employees for superannuation guarantee purposes, and you may need to pay superannuation contributions for them.

It doesn't matter if the independent contractor works under an Australian Business Number (ABN).

Make super contributions for independent contractors if you pay them:

- under a verbal or written contract that is mainly for their labour (more than half the dollar value of the contract is for their labour)
- for their personal labour and skills (payment isn't dependent on achieving a specified result)
- to perform the contract work (work cannot be delegated to someone else).

To learn more, read the Australian Taxation Office's (ATO) [guidance on super for independent contractors](#).

PAYG withholding tax

In labour hire, providers must withhold tax from payments to workers engaged as independent contractors.

Independent contractors also need to provide their tax file number (TFN), regardless of whether they also have an ABN or an instalment rate to vary the rate of tax.

For more information, read the ATO's [guidance on labour hire firms and their workers](#).

Payroll tax

If your total Australian 'wages' bill exceeds \$83,333 per month / \$1,000,000 per year (from 1 July 2025), then you may need to register for and pay payroll tax.

In Victoria, payroll tax is governed under the [Payroll Tax Act 2007 \(Vic\)](#) (Payroll Tax Act).

Employment agency contracts

Payments to independent contractors can count as wages for payroll tax purposes if the arrangements are 'employment agency contracts' under the Payroll Tax Act.

'Employment agency contracts' cover most types of labour hire arrangements involving the engagement of workers as independent contractors to be placed with hosts.

For more information about employment agency contracts, read the SRO's [guidance on employment agencies](#).

Relevant contracts

Even if the employment agency provisions do not apply, payments to independent contractors could still count as wages for payroll tax purposes if the arrangement with the independent contractor is a 'relevant contract'.

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To learn more about payments to independent contractors and payroll tax, read the State Revenue Office's (SRO) [guidance on contractors](#).

The Payroll Tax Act treats 'employment agency contracts' and 'relevant contracts' differently, so it is important to apply the correct provisions. If you need assistance understanding your payroll tax obligations, [contact the SRO](#).

Workers' compensation insurance

Victoria's workers' compensation insurance scheme is set up under the [Workplace Injury Rehabilitation and Compensation Act 2013 \(Vic\)](#).

The insurance premium is calculated as a percentage of the 'remuneration' paid to workers during a financial year.

In labour hire, payments to workers engaged as independent contractors will usually be counted as remuneration.

For more information about when payments to independent contractors count as remuneration, read WorkSafe Victoria's [guidance on understanding who is and isn't your worker](#).

Anti-discrimination laws

Many anti-discrimination laws, including some of the general protections in the Fair Work Act, the [Racial Discrimination Act 1975 \(Cth\)](#) and the [Equal Opportunity Act 2010 \(Vic\)](#) protect independent contractors from discrimination and victimisation.

Private security industry laws

Since 19 December 2025, under the [Private Security Act 2004 \(Vic\)](#), providers who engage security guards and crowd controllers as independent contractors must ensure those workers hold both:

- a private security individual operator licence, and
- a private security business licence.

The primary purpose of the new private security business licence requirement is to deter businesses from intentionally misclassifying their employees as independent contractors.

An individual who wishes to operate a genuine business in the private security industry as an independent contractor may still do so, so long as they hold the required business licence.

LHA'S REGULATORY APPROACH

LHA was set up to protect workers from exploitation by providers and hosts, and to improve the transparency and integrity of the labour hire industry.

We work with providers who demonstrate they are willing and able to comply with their legal obligations. Conversely, providers who demonstrate they are unwilling or unable to comply, are identified and removed from Victoria's labour hire licensing scheme.

We also work closely with other regulators and law enforcement agencies, and share information as permitted by law.

For more information about how LHA regulates the labour hire industry, read [LHA's Compliance and Enforcement Policy](#).

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