



EMPLOYEES VS CONTRACTORS

For any business, getting busy enough to need extra help is an exciting step. This guide is designed to make the process of working out what sort of help you need a little less daunting. It's important to get this right as employees have more rights than contractors.

AM I AN "EMPLOYER"?

This might seem like a silly question, but sometimes a worker is labelled a "contractor", when the real nature of the relationship shows they are in fact an employee.

An employment relationship tends to look a bit like this:

- ◆ You tell them what to do and how
- ◆ You tell them how much you will pay them and decide whether to give a pay rise
- ◆ You tell them when to work
- ◆ You have oversight over their work
- ◆ You provide relevant training for their role
- ◆ They probably just work for you
- ◆ You provide the equipment they need to do their job
- ◆ They wear your uniform and/or appear on your website
- ◆ They are generally regarded as "part of the team", attend Christmas parties etc.
- ◆ They can't get someone else to do their work for them
- ◆ They don't advertise as being available to work for others
- ◆ They are paid automatically, normally either weekly or fortnightly

WHAT MAY HAPPEN IF YOU GET IT WRONG:

All working arrangements are slightly different and a worker won't always fit exactly into one camp or the other, so get advice if you're in doubt because getting it wrong could affect your ability to bring in workers from overseas and lead to a liability to pay:

- ◆ unpaid minimum wages;
- ◆ unpaid PAYE tax;
- ◆ holidays and other leave entitlements;
- ◆ a penalty from the Employment Relations Authority (up to \$20K per breach for a company or \$10K per breach for an individual); and
- ◆ a penalty from IRD (usually calculated as a % to be paid on top of the PAYE shortfall, which varies depending on the circumstances).

Whereas a contractor relationship looks more like this:

- ◆ You tell them the goal you want to achieve and they determine how they will do it
- ◆ They tell you how much they charge and tell you if their rate increases
- ◆ They tell you when they are available/determine when to carry out the work
- ◆ They are responsible for their own work with no oversight from you
- ◆ It is their responsibility to ensure they have the skills required to do the work
- ◆ They provide the service to many businesses, not just you
- ◆ They provide the equipment they need to do the job
- ◆ They don't wear your uniform and/or don't appear on your website
- ◆ They are generally regarded as a service provider, not "a part of the team"
- ◆ They may have employees working for them who do some of the work
- ◆ They advertise their services to others
- ◆ They invoice for their services, normally monthly, and may be GST registered



WHICH EMPLOYMENT AGREEMENT?

So you've determined you're an employer or you're wanting to become one. But the role you've got on offer is not a Monday to Friday 9-5 job. So where to from here?

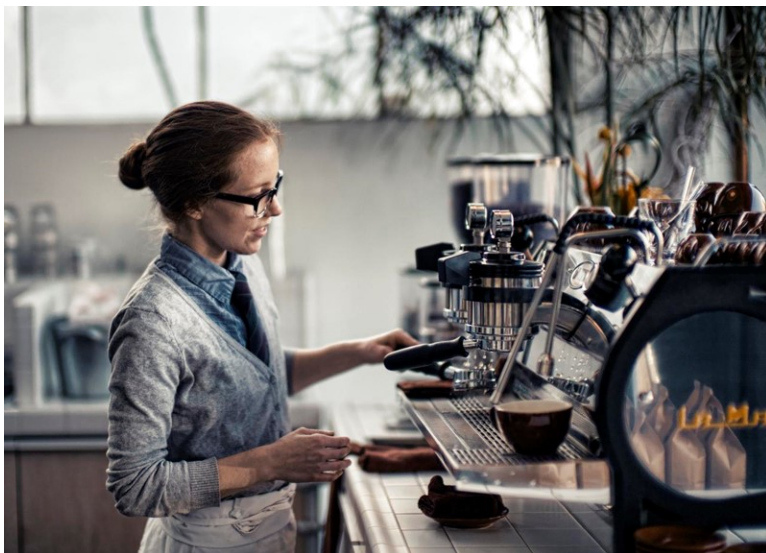
Broadly speaking, there are three types of employment: permanent (whether full-time or part-time), fixed-term (whether full-time or part-time) and casual.

Permanent employees are by far the most common and tend to have fixed hours/days or a rolling roster that tends not to change too much.

Fixed-term employees can be used if you have a "genuine reason based on reasonable grounds" for offering the fixed term, such as covering parental leave, helping out with a seasonal high, or completing a specific project. It is vital that the reason is explained to the prospective employee and set out in their employment agreement.

Casual employees should be used when you need irregular help. Casual employees have no expectation of regular work, you occasionally contact them and offer them some work and they can choose to accept or decline the offer each time. It is fairly common for a casual employee to become permanent part-time over time as business picks up or a permanent staff member leaves meaning the casual employee start working more regularly. It's important to keep an eye on casual employee's hours and offer an updated agreement if necessary. If in doubt, get advice because getting it wrong could be costly for your business as permanent employees have more rights and responsibilities than casual employees.

It is really important to work out what employment type (s) will best suit your business needs. This will change over time, so it needs to be revisited from time to time. If in doubt, get advice.



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DO MY EMPLOYEES NEED A WRITTEN AGREEMENT?

In a word: yes. It is a legal requirement that every employee has a written employment agreement.

There are templates and tools available online to generate employment agreements. But a word of warning about templates: they are designed to cover a lot of bases and they are not fool-proof. In particular, there may be clauses available in a template that you don't realise you shouldn't use, such as a 90 day trial if you have more than 19 employees or a redundancy clause in a casual agreement. There could also be some important clauses that do not appear in a template, but are very important to your business, such as a probationary period or restraint of trade clause.

There is no substitute for employment agreements tailor made for your business with your particular industry, operating environment and employees in mind.

DO MY CONTRACTORS NEED A WRITTEN AGREEMENT?

There is no legal requirement here, but it makes sense to have some kind of agreement in place, whether it's a contract for services or simply a quote from the contractor that you've accepted.

MORE INFORMATION

A bit of help to get your business on the right path when it comes to employment law is an investment that pays dividends. Having people engaged in the right way and employment agreements, contracts and policies tailored to your business makes dealing with issues much simpler if they arise later.

If you have contractors/employees or you're thinking about hiring some – give us a call or send us an email to find out how we can help:
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