

EMPLOYEE OR CONTRACTOR ?

getting it right



The legal distinction of who is an Independent Contractor and who is an Employee has significant financial liabilities attached to it.

It is vital from the outset that the business relationship is defined because if there is a lack of clarity and a dispute arises then the business could face serious financial ramifications in regards to tax payments and employment rights.

A person is not able to be both a Contractor and an Employee so it is important to know the difference and to get it right.

An Employee

An Employee is afforded a lot of minimum rights under the Employment Relations Act and other employment legislation; they have the right to things such as minimum wage, paid annual leave, and sick leave.

An Employer has greater control over work and an Employee is required to work to the Employer's standards. Obligations in this type of relationship are required to be outlined in the written Employment Agreement and in dispute situation Employees can raise personal grievances.

An Independent Contractor

An Independent Contractor is self-employed and therefore not covered by the same employment rights provided in the Employment Relations Act or other employment legislation.

They are not entitled to paid holidays, sick leave or bereavement leave, and are unable to bring a personal grievance when disputes arise.

A Contractor is in business on their own account so they have the right to refuse work and are able to determine when they work and to a certain extent how the work is done.

Contractors are not entitled to a written Employment Agreement, however we recommend that you do use a written agreement to make clear the business relationship.

Paying Tax

If you have entered an agreement with a Contractor then you need to understand your obligations in regards to paying tax.

If a Contractor is performing certain activities which have been identified by Inland Revenue then you are required to pay withholding tax from their schedular payments. If they are not performing any of those specified activities then they are responsible for paying their own tax.

With Employees you are required to deduct PAYE from their wages or salary. Getting it wrong could cost your business a lot of unforeseen expenses.

Its not always clear cut

It is not always clear cut whether someone is an Employee or a Contractor, and when disputes occur the Employment Relations Authority consider all relevant matters and the parties' position on the relationship is not always conclusive.

Having a signed off Contractors Agreement in place goes a long way to protect the Business