

Plant & Associates



Contractor v Employee

A contractor will be an employee where:

- The individual is remunerated (either wholly or principally) for their personal labour and skills;
- the individual must perform the contractual work personally (there is no right of delegation)
- the individual is not paid to achieve a result

There are six main tests to consider:

1. The control test
2. The integration test
3. The results test
4. The delegation test
5. The terms of engagement test
6. The risk test

A **contract for services** would state the services to be performed in return for an agreed payment and or results.

The main features of the control test are the right to **control** how, when, where and who is to perform the labour.

Activities or requirements of a worker which may indicate their **integration** into the business include:

- the hours spent working for the principal
- the work is normally performed at the premises of the principal
- the work is performed using a substantial amount of the principal's assets and equipment
- inability to perform other work
- performance is monitored
- requirement to comply with the principal's policies
- guidelines or directions, training, dress standards
- attending meetings
- provision of protective equipment.

Example 1:

Harry's Hobby Shop makes a contract with Pete's Paints to paint their new shop. The entire job is completed by one painter from Pete's Paints. This painter is not an employee of Harry's Hobby Shop for super guarantee purposes. The contract is between Harry's Hobby Shop and Pete's Paints. Harry's Hobby Shop has no control over which particular individuals do the work and paid Pete's Paints to achieve a result. Pete's Paints may have super guarantee obligations for the painter.

Example 2:

David's Caravan Park has a contract with Amanda, a freelance administrative assistant, to answer phones and do administrative work for 15 hours per week. The contract specifies that Amanda herself must perform the work. Amanda has an ABN and invoices David weekly for the hours she works. Amanda is considered David's employee for super guarantee purposes because:

- their contract is wholly for the labour and skills Amanda provides as an administrative assistant
- she performs the work personally
- she is paid according to the number of hours worked.



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