

Who is a Contractor ?

This is an important question as **incorrectly treating a worker as an independent contractor exposes directors to personal liability for Superannuation.**

NSW Workers compensation Auditors state that if someone is not registered for GST they are not carrying on a business and therefore the payments to them are deemed wages.

The ATO has a more commercial approach...the questions they look at are:

- Does it involve taking risk, eg Commission payments or success payments, not hourly rate. Opportunity for Profit or Loss
- Level of Control, they just do a full task or only part
- Do they employ other people
- Does the business activity create goodwill for the contractor
- Do they advertise or promote the business
- Do they have assets to engage in the business activity
- Do they have a business accounting system

If they do not meet enough of the criteria above then there should be Super Guarantee paid on their behalf.

The real catch in the tail is that someone should have paid Super then they cannot claim it if they pay for themselves.

You are also liable to withhold PAYG tax from them.

You can have casual workers without Holiday pay etc but the correct rate or above must be paid.

The only way to ensure you are not caught is to insist they work through a Company, Trust or Partnership structure.

But if you encourage someone to be a Contractor when they are really an employee you will be in trouble with Fair Work.

If in doubt or would like more information, please contact Palmers Chartered Accountants on 02 9982 7200