

Employment types and when to use them

This quick reference tool is designed to provide guidance only on the types of employment available for engaging individuals in paid work through your business. Circumstances will differ from individual to individual and will need to be considered on a case by case basis. This document does not replace advice from Fair Work Australia or provide legal advice but simply provides some pointers on the types of employment available to employers. For further information and queries, book some time with our HR partner, Nurture HR Consulting [here](#).

Employment type	Characteristics
Casual	<p>Works ad hoc, on an hour for hour basis</p> <p>Paid a loading in lieu of entitlements.</p> <p>Under the National Employment Standards (NES), casual employees get:</p> <ul style="list-style-type: none"> access to a pathway to become a permanent employee 2 days unpaid carer's leave per occasion 2 days compassionate leave per occasion paid family and domestic violence leave unpaid community service leave.
Part-time	<p>Works for fewer ordinary hours than 38 hours per week (or fewer than the ordinary number of hours per week that is considered full-time at the workplace by the employer) on a reasonably predictable basis.</p> <p>Part-time employees get the same minimum entitlements as a full-time employee, but on a pro-rata basis. This includes paid leave, such as:</p> <ul style="list-style-type: none"> annual leave sick and carer's leave. <p>They also get 10 days paid family and domestic violence leave. This isn't pro-rated.</p>
Full-time	<p>Works 38 ordinary hours per week; or</p> <p>is engaged to work the number of ordinary hours (fewer than 38) per week that is considered full-time at the workplace by the employer – typically this is 37.5 hours for most organisations.</p> <p>A full-time employee is entitled to paid leave, including:</p> <ul style="list-style-type: none"> annual leave sick and carer's leave family and domestic violence leave.
Permanent	<p>Typically engaged under an employment contract or Award as either part-time or full-time, and has a guaranteed number of working hours per week with no fixed end date. Can be Full-time or Part-time.</p>
Fixed Term	<p>Employed on a short term basis to carry out a particular project or task such as covering for parental leave i.e. to a maximum of 2 years</p>

What Constitutes an Independent Contractor?

Due to recent legal determinations and revenue authority guidelines; surrounding what and whom constitutes an independent contractor, a number of organisations have found themselves taken aback, to learn that individuals they thought were “independent contractors” were in fact deemed “employees” by the courts, resulting in significant payouts and fines.

The simple fact that the contractor is a private company of which the worker is an employee (or if a worker is engaged through a labour-hire firm), the belief that no contract can exist between the worker and the host company is not necessarily a given, as to the worker’s classification as an independent contractor.

Independent contractors provide services to another person or business. They aren’t employed by that person or business. Independent contractors usually negotiate their own fees and working arrangements and can work for more than one client at a time. Independent contractors are also called contractors or subcontractors.

An independent contractor is defined as someone who:

- is not seen to be part of the business
- controls the manner in which they work e.g. the hours they work and where the work is performed
- is engaged for a particular task or result, which ends upon completion of the task
- can delegate performance of the work to a third party
- is an incorporated business which supplies the workers
- is responsible for fixing their mistakes at their own expense
- is not limited to working exclusively for the service provider
- holds their own workers compensation and professional indemnity insurance
- carries the financial responsibility and risk for each task and activity
- supplies the tools and equipment
- holds an ABN
- supplies an invoice before they are paid
- in performing the work an entrepreneur who owns and operates a business; and in performing the work, is that person working in and for that person’s business as a representative of that business and not of the business receiving the work

Courts can impose penalties against businesses or individuals for sham contracting resulting in significant penalties for organisations and individuals. The current maximum penalty is \$18,780 for individuals and \$93,900 for corporations, per contravention.

Other cases before the Federal Court have determined that organisations had engaged employees as contractors when they were deemed to be working as employees. (Sham contracting). For example, an organisation was fined the penalty and ordered to pay the individuals it had employed as independent contractors, but whom the Court found to be employees resulting in payments of \$500,000 in accrued leave entitlements on top of the penalty.

Classification as an independent contractor rather than an employee has legal implications for both parties. Hence if a worker is seen to be part of the business, working exclusively, utilising the equipment and tools of an organisation etc. that worker would be deemed to be an employee by the courts. As an employee, the worker is entitled to receive employment entitlements, whilst it obliges the employer (user) of the worker to pay statutory on-costs to relevant authorities e.g. payroll tax etc. Employment entitlements include:

- annual leave
- personal / sick leave
- minimum pay for each hour worked
- overtime and penalty rates
- the right to valid reason and fair procedure before dismissal.

Therefore, very large obligations may arise quite suddenly if workers are reclassified as employees, either by revenue authorities or the courts. In one particular recent decision, this resulted in financial implications so large as to place a business into voluntary administration for a significant period of time.

To highlight the definitions of what constitutes an employee, please refer to below:

A permanent employee is defined as someone who:

- is employed on a permanent basis either working full time or part time
- works under the direction of the employing entity
- utilises the equipment and tools of the employing entity e.g. computer, cars, uniform
- carries out work at the employing entities premises
- accrues entitlements
- has the right to valid reason and fair procedure before dismissal

A fixed term employee is defined as someone who:

- is defined as all the above with the exception that they are employed on a short term basis to carry out a particular project or task i.e. typically no greater than 12 months

A casual employee is defined as someone who:

- works on an ad hoc, hour by hour basis
- is paid a loading in lieu of entitlements
- works under the direction of the employing entity
- utilises the equipment and tools of the employing entity e.g. computer, cars, uniform
- carries out work at the employing entities premises

Considerations:

The other area to consider is the ongoing hire of temporary employees or contractors, for example the courts have also deemed temporary employees or contractors whom have had their contracts continually renewed, to be deemed permanent employees resulting in significant costs when it comes to terminating a temporary contract or contractor in the form of redundancy payments and or fines under breaches of the Fair Work Act.

ATO Employee versus Independent Contractor Guidelines:

The ATO says that “at its core, the distinction between an employee and an independent contractor is that:

- an employee serves in the business of an employer, performing their work as a part of that business
- an independent contractor provides services to a principal’s business, but the contractor does so in furthering their own business enterprise; they carry out the work as principal of their own business, not part of another.”