

Who is a worker?

Guidance for employers

JUNE 2021 – GD720 V7

Who is a worker?

This guide will help you determine who is a worker and who you need to cover with workers' compensation insurance by guiding you through:

- the tools available to help you make decisions on who you need to cover
- the relevant parts of the *Workers' Compensation and Rehabilitation Act 2003* (the Act).

Who is a worker?

This guide will help you determine who is a worker and who you need to cover with workers' compensation insurance.

- The Act explains that a worker is 'a person who works under a contract and, in relation to the work, is an employee for the purpose of assessment for PAYG withholding under the *Taxation Administration Act 1953* (Cwlth), schedule 1, part 2-5'.
- Only an individual can be a worker.
- Relevant sections of the Act are:
 - Section 11 – Who is a 'worker'
 - Schedule 2, Part 1 – Certain persons who are workers
 - Schedule 2, Part 2 – Certain persons who are not workers

Four key steps

There are four key steps to follow in order to determine who is a 'worker'. Once a step shows that a person is a worker, no further tests need to be applied.

1

Is there a
contract for
performance
of work?

2

Excluded
categories

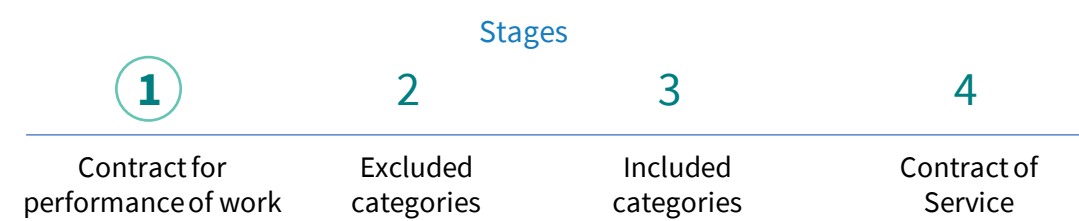
3

Included
categories

4

Contract of
Service (not a
Contract for
Services)





Step 1: Is there a contract for performance of work?

The following contracts are not considered to be a contract for performance of work:

- Contract of bailment
- Granting a right to use property
- Supplying or selling goods.

You can find more detailed information on this step on our [website](#).

You need to proceed to the next step if it has been determined there is a contract for performance of work.

Contract for
performance of work

Excluded
categories

Included
categories

Contract of
Service

Step 2: Specific exclusions

The Act explains that the following are not considered 'workers':

- a contract to obtain services from a company, trust or partnership
- a director of a corporation (where the corporation is the employer)
- a trustee (where the trust is the employer)
- a partner working for their own partnership (where the partnership is the employer)
- a person who is engaged by the Commonwealth
- a professional sportsperson
- a member of the crew of a fishing ship who receives a share of gross earnings
- a person supplying and using a motor vehicle for tuition
- a person participating in an approved program or work for unemployment program
- a person who has a personal services business determination (PSBD) from the Australian Taxation Office (ATO).

Contract for
performance of work

Excluded
categories

Included
categories

Contract of
Service

Step 2: Specific exclusions

A worker can only ever be an individual. This means that if a business engages a company, trust or partnership, then they will not be a ‘worker’.

Example

Quick Plumbers Pty Ltd is engaged by Large Building Company Pty Ltd to do the plumbing on a unit block that is under construction. There is no employment relationship because Large Building Pty Ltd does not have a contract with an individual, but with a company, and only individuals can be ‘workers’.

You can find more detailed information on this step on [our website](#).

If the individual is not specifically excluded as a worker under the Act, you need to proceed to the next step.

Step 3: Specific inclusions

The Act says the following individuals are specifically included as a worker:

- sharefarmer if they do not provide farming machinery and receive no more than one third of the farm proceeds
- salesperson paid entirely or partly by commission
- labour hire, group training, holding company employees (they are workers of the relevant labour hire, group training, holding company).

You can find more detailed information on this step on [our website](#).

If the individual is not specifically included as a worker under the Act, you need to proceed to the next step.

Step 4: Contract of service

At this step, you can now use the [ATO online decision tool](#) to determine if the person should be covered with workers' compensation insurance.

If the ATO decision tool determines a person to be an employee or a contractor, WorkCover will accept that decision for insurance and claims purposes. We encourage you to keep a copy of the ATO decision.

'Contract of service' refers to the contract between an employer and an employee. Many people work under a contract of service, e.g. the PAYG system. 'Contract for services', on the other hand, is generally used to describe a relationship with an independent contractor.

To determine whether a worker is an employee or contractor, we need to consider the whole working arrangement and look at the specific terms and conditions between the parties under which the work is performed across [ATO's six key common factors](#).

There is no single common law factor that will be conclusive in determining whether the worker is an employee or contractor. All of the working arrangements need to be considered.

Step 4: Contract of service

The ATO's six key factors to determine whether someone is an employee or a contractor include:

- ability to subcontract/delegate
- basis of payment
- equipment, tools and other assets
- commercial risks
- control over the work
- independence.

You can find the full list of factors with explanations on the [ATO website](#).

Step 4: Contract of service

Examples

Someone who is *not* a 'worker' might:

- provide heavy machinery, such as a truck driver or a courier / delivery van driver
- subcontract or employ others to do the job
- provide an upfront total quote for a job and their own tools of the trade
- fix defects at their own expense.

Someone who *is* a 'worker' might:

- work on an hourly rate or piece work rate
- not provide their own tools or receive an allowance for providing their own tools
- not be liable for the cost of fixing any defects.

Avoid these common mistakes

These examples are common mistakes made by people trying to determine whether someone is a ‘worker’. The following are assumed reasons employers believe make someone a contractor, when this may not be the case.

- The worker has an ABN
- Short-term work
- They have used contractors in the past
- Other employers in the same industry treat workers as contractors
- The worker has a registered business name
- The worker is working on different jobs
- The worker has specialist skills or qualifications
- The worker wants to be a contractor
- The worker uses invoices
- There is a contract that says the worker is a contractor, but legally they are classed as a worker

More information

- visit [worksafe.qld.gov.au](https://www.worksafe.qld.gov.au)
- call your Relationship Manager
- call us on 1300 362 128.

