



## FACT SHEET

# WORKER OR CONTRACTOR PAYING THE CORRECT PREMIUM

### WORKER OR CONTRACTOR – WHICH DO YOU HIRE?

It is important to determine the correct status of workers. Knowing which workers should be included in the calculation of a workers compensation insurance premium will ensure the correct premium amount is being paid.

### WORKER OR CONTRACTOR

A number of factors together determine whether a person is a worker or a contractor. No individual indicator is conclusive. All aspects of the engagement relationship between the employer and the hired person should be taken into consideration, in particular the terms of the engagement.

Some key indicators in determining if a person may be a contractor include, but are not limited to:

- work is quoted on a job-by-job basis
- the job has a start and end date
- payment amount is fixed for work performed and is made to a registered business entity and not to an individual
- the person hired provides their own tools and equipment
- the person hired subcontracts or delegates the work
- the person chooses the hours they work and is able to offer their services to others
- a guarantee or warranty for the work performed is provided and rectification of defective work is provided at their own expense

**Having an ABN does NOT necessarily mean that the person is a contractor. Consideration must be given to the full nature of the agreement between the parties.**

### DEEMED WORKERS

In some circumstances where a contractor is under the direction and control of a Principal contractor, the contractor may be deemed as a worker of the Principal (Schedule 1 *Workplace Injury Management Act 1998*).

Deeming provisions apply to certain industries such as labour hire, outworkers, salespersons, canvassers and collectors, rural workers, timber getters, mine employees, boxers, wrestlers, referees and entertainers. A comprehensive list of deemed workers is contained under Schedule 1 of *The Workplace Injury Management and Workers Compensation Act 1998*.

For further information regarding deemed workers refer to the WorkCover NSW Wages Definition Manual.

## **WORKER**

Some key indicators that a person may be worker include, but are not limited to:

- payment for services is based on period of time worked. For example, hourly rate with payment made at regular periods, usually weekly or fortnightly
- the person works fixed or regular hours under the supervision and control of an employer
- employer provides materials/ equipment
- the person performs work for the employer in accordance with an employment contract and takes no commercial risk
- work is performed personally and cannot be subcontracted to others
- employer provides tools unless specifically agreed
- the person receives paid leave. For example, sick, annual and long service leave.

## **COMMON MYTHS ABOUT DETERMINING WORKER STATUS**

- **The person has an ABN and invoices for work:**  
While these indicators are taken into account, on their own they are not conclusive indicators that the person is not a worker. The whole of the relationship must be taken into account.
- **The person works for others:**  
A person can be a worker for more than one employer. While this is one indicator, the whole of the relationship must be taken into account. This is particularly the case where the work for others is only conducted either on weekends or outside of their regular working hours.
- **80/20 rule:**  
This is a taxation rule only. This is not considered for workers compensation purposes.
- **The person carries sickness and accident insurance:**  
Carrying another form of insurance does not extinguish any workers compensation liability an employer may have for a person who is considered a worker or deemed worker.

## **THE WORKER STATUS SERVICE**

WorkCover NSW has established the Worker Status Service, a free and accessible service, to assist employers with determining who to include in their workers compensation policy wage declaration.

An innovative feature of the service is the online self-assessment tool, accessed via the WorkCover website, that provides guidance to employers on the status of a person or group of people, ie worker or contractor.

The tool walks the user through a series of simple questions and information is provided to assist in answering the questions. Based on the information provided, the tool will generate a report providing advice on the person or group's status, ie worker or contractor.

The Worker Status Self Assessment Tool is **anonymous**. It is simple to use and can be accessed at [www.workcover.nsw.au/workerstatus](http://www.workcover.nsw.au/workerstatus). A manual version can also be sent to employers who do not wish to use the internet.

The result of the self-assessment is **non-binding**, it is simply a guide to assist employers. If, after using the tool, you still wish to seek clarification, it is recommended you lodge an application for a private ruling.

## **PRIVATE RULINGS**

An employer may seek further clarification by applying to WorkCover to issue a prospective private ruling. A private ruling is a **binding notice** from WorkCover that states whether a person, or group of persons, are workers or contactors for the purpose of including wages for workers compensation premium calculations.

The application form is to be signed and completed by the employer who then attaches any supporting documentation. Examples of supporting documentation include the decision of the self-assessment tool, copies of contracts, invoices etc. The application is then submitted to WorkCover.

It is important to note a Private Ruling does not prevent a person lodging a Workers Compensation claim and cannot be used in any claims proceedings.

## **SUPPORTING DOCUMENTATION**

All supporting documentation utilised in the determination process, whether by using the self-assessment tool and/or a private binding ruling (together with the Private Ruling certificate), should be retained with all wage records for **five** years.

## **FURTHER INFORMATION**

To find out more call the Worker Status Service on 13 10 50, or visit [www.workcover.nsw.gov.au/workerstatus](http://www.workcover.nsw.gov.au/workerstatus)

This information is intended as a guide only. For more detailed information visit [www.workcover.nsw.gov.au/workerstatus](http://www.workcover.nsw.gov.au/workerstatus)

### **Disclaimer**

This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)) or by contacting the free hotline service on 02 9321 3333.

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.



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