

Employee v Contractor tests

This will give you an indication only. No single question will determine the true nature of the relationship as the ERA and Employment Court take a holistic approach.

INTENTION TEST <i>(These questions look at what the parties intended the relationship to be.)</i>	<i>Contractor</i>	<i>Employee</i>
Do you have a written contract specifying the relationship is that of a contractor?	Yes	No
Are there terms in that contract that relate to paid holiday pay, sick leave, or other similar entitlements?	No	Yes
Did the parties agree at the beginning of the relationship that they would be engaged as a contractor?	Yes	No
CONTROL TEST <i>(These questions look at how much control the Company has over the performance of the tasks, the more control, the more likely an employee status.)</i>	<i>Contractor</i>	<i>Employee</i>
Does the contractor have control over how, where and when the work is done (within practicality)?	Yes	No
Is the contractor responsible for quality and pricing?	Yes	No
Can the contractor hire other people to do the work?	Yes	No
INTEGRATION TEST <i>(These questions look at whether the tasks are part of normal company services rather than a one-off service.)</i>	<i>Contractor</i>	<i>Employee</i>
Is the type of work different from that normally done by other individuals who are employees?	Yes	No
Does the contractor pay for any expenditure incurred in doing the job?	Yes	No
Does the contractor invoice the business?	Yes	No
Are the services to be performed part of the usual day to day activities of the contractor?	Yes	No
ECONOMIC REALITY TEST (Fundamental Test) <i>(These questions determine whether the person is genuinely in business in their own account).</i>	<i>Contractor</i>	<i>Employee</i>
Does the contractor supply the necessary tools, vehicle, office, phone etc?	Yes	No
Does the contractor provide consultancy advice?	Yes	No
Is the contractor free to work for other organisations?	Yes	No
Does the contractor invoice you and is paid a pre-arranged negotiated fee?	Yes	No
Is the contractor responsible for tax payments and ACC levies?	Yes	No
Do payments include GST?	Yes	No
Is the contractor responsible for any loss or profit?	Yes	No
Is the contractor exposed to any financial risks?	Yes	No
Is the contractor required to arrange their own insurance, including public liability cover?	Yes	No
Is the contractor liable for correcting sub-standard work?	Yes	No
Could the business sue the contractor for loss?	Yes	No
If the work is not done to specification, can payment be stopped?	Yes	No