

Checklist – Employees vs Contractors

Please note that this Checklist is a guide only, and that some of the factors below may overlap. There is no one determinative factor that tips the balance either way. The outcome in any case depends on an assessment of all relevant factors together. This Checklist is drafted to show the opposites (ie. at either end of a spectrum) but often the factors will be more finely balanced (eg. both parties might provide some equipment). You might check a number of "Employee" boxes but still have a genuine contractor relationship, and vice versa.

EMPLOYEE		CONTRACTOR	
INTENTION OF THE PARTIES			
The person has an employment agreement and 'serves' the organisation.		The person has a contract for services and provides services to the organisation.	
The person is described as an "employee" in the employment agreement.		The person is described as an "independent contractor" in the contract for services.	
The organisation provides the person with Holidays Act 2003 entitlements (e.g sick leave, bereavement leave, public and annual holidays).		The organisation does not provide the person with Holidays Act 2003 entitlements.	
CONTROL vs INDEPENDENCE			
The organisation controls what work the person does, and where, when and how the person carries out the work.		The person has more control and flexibility over where, when and how the work is carried out.	
The person has to ask for time off work, and the organisation approves that time off.		The person has more control over his or her availability, and advises the organisation when he or she is or is not available (ie he or she chooses when to do the work).	
The organisation supervises and directs the person's work.		The organisation does not supervise or direct the person.	
The person must carry out the work him or herself.		The person has more flexibility to contract out some or all of the work. (This might include the person arranging their own cover if they are away or unavailable)	
INTEGRATION			
The person's work is an integral part of the organisation's business.		The person's work is an accessory to or is ancillary to the organisation's business.	
The person has an organisation email address, and access to the organisation's systems.		The person uses his or her own personal or company email address, and does not have any, or has limited access to the	

EMPLOYEE		CONTRACTOR	
		organisation's systems.	
<p>The organisation provides the person with the equipment and resources required to carry out the work. E.g:</p> <ul style="list-style-type: none"> • The organisation provides all necessary safety and protective gear. • All equipment is marked with the organisation's logo. • The equipment cannot generally be used for personal purposes. 		<p>The person provides his or her own tools, equipment and resources required to carry out the work. E.g:</p> <ul style="list-style-type: none"> • The person supplies his or her own safety and protective gear. • The person has his or her own equipment and gear and it may carry their own branding. • The person can use his or her equipment for any purpose. 	
<p>The person is reimbursed for work-related expenses e.g. travel, petrol.</p>		<p>The organisation does not pay the person for any work-related expenses. These are covered in the overall fee.</p>	
FUNDAMENTAL / ECONOMIC REALITY TEST			
<p>The organisation contracts with the person as an individual.</p>		<p>The organisation contracts with a legal entity, not an individual.</p>	
<p>The person is not GST registered.</p>		<p>The person is GST registered.</p>	
<p>The person must receive at least minimum wage.</p>		<p>The person is paid the agreed rate.</p>	
<p>The person may provide a timesheet and the organisation pays the person on regular cycles.</p>		<p>The person submits invoices to the organisation, and the organisation pays the person after receipt of the invoice.</p>	
<p>The organisation generates the requisite time sheets and payroll processes.</p>		<p>The person generates his or her own invoice.</p>	
<p>The organisation pays the person the same amount in regular intervals, regardless of the work carried out.</p>		<p>The person and the organisation agree to a rate. The amount the person is paid may vary depending on the services delivered.</p>	
<p>The organisation pays the person's PAYE tax to the IRD and ACC levies on behalf of the person.</p>		<p>The person pays tax directly to IRD, and pays ACC levies him or herself.</p>	
<p>The organisation contributes to the person's KiwiSaver.</p>		<p>The person does not receive KiwiSaver contributions from the organisation.</p>	
<p>The person has limited or no ability to increase his or her profit from the work. Any increase in monetary benefit is only</p>		<p>The person has an ability to profit from the work. E.g:</p>	

EMPLOYEE		CONTRACTOR	
<p>through agreed pay rises.</p> <p>The organisation may restrict the person's ability to obtain secondary employment.</p>		<ul style="list-style-type: none"> • The person can propose an increased rate. • The person can decide to take on additional work (for other entities). • The person can increase profits by working efficiently. 	
<p>The person carries no financial risk as the organisation pays the person regularly and the person does not incur costs (other than work-related expenses that are reimbursed).</p> <p>The organisation arranges its own insurance.</p>		<p>The person carries financial risk. E.g:</p> <ul style="list-style-type: none"> • The person may make a loss if the costs exceed the fees paid. • The person self -insures. 	

This checklist is dated September 2018. It is provided for general information purposes only and not as legal advice.

For 15 minutes of free legal advice, you can call the Sport NZ Legal Helpdesk on 0800 283 529.

For more complex matters, Buddle Findlay can assist, and provides discounted rates to Sport NZ members.