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Difference Between an Employee and an Independent Contractor

— By Paul May



There are many situations in the New Zealand work place where there is confusion as to whether a person is an Employee of a Company or whether that person is an Independent Contractor who provides services to the Company on his or her own account.

There are very obvious examples of situations where a person is either an Employee (works in the same place all of the time, is under the complete control and direction of the Employer etc) and where a person is an Independent Contractor (e.g. you call an electrician from time to time to fix the lights in your office).

However, there are a lot of situations in which the position is not so black and white.

In these situations it is important that both parties to the arrangement fully understand whether the person involved is an Employee or an Independent Contractor. Whether you are one or the other will have an important influence on a number of aspects of life.

If you are an Employee you have the benefit of the following:

- You have benefits protected by law such as holidays, sick leave, maternity leave, bereavement leave etc;

- You are entitled to take a personal grievance claim if you feel you have been unfairly treated or dismissed;

- You are entitled to receive holiday pay.

If you are an Independent Contractor you have the following advantages:

- Flexibility as to the hours you work (in some cases);

- The right to claim taxable deductions for the expenses you incur in operating your own business;

- The right to provide your services to more than one organisation;

- The right to determine how much work you take on.

For an Employer it is very important to know whether someone is an Employee or an Independent Contractor. For example, if

you believe you have contracted with someone on the basis that they are an Independent Contractor then the rules relating to the ending of your contract are much easier to comply with. It does pay to be very careful though! If you believe you have an Independent Contractor but, in actual fact, Employment Law decides that your relationship with that person is one of Employer/Employee then you could end up terminating the arrangement wrongly and be subject to a costly and expensive personal grievance claim.

The first place to look when deciding whether a person is an Employee or an Independent Contractor is any documentation. For example, you may have an Agreement in writing with someone that they are an Independent Contractor. However, the Employment Relations Authority will look beyond the paper work and have decided in past cases that although someone was described in writing as an Independent Contractor the way they were treated actually made them an Employee.

If you are in any doubt you should feel free to contact us at anytime.