

Employee vs Contractor: Healthcare Work Guide

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When starting a new job, you can be engaged to perform work in a number of capacities. For example:

- Employee – contract of employment
- Independent Contractor – contract for service
- Services and Facilities Agreement – contract of service

It is important you understand the nature of the engagement that you are entering into with the other party. It is not uncommon for healthcare practitioners to be engaged as contractors or to provide services through a service and facilities arrangement. The benefits and obligations are different in an employment or contracting arrangement and it is therefore important to understand what you are being offered.

There are ways where you can distinguish between the different types of arrangements. Usually, the agreement will tell you what kind of arrangement you are entering. However, sometimes the title given might not reflect the true nature of the relationship. So, it is helpful to examine the details to identify which characteristics define each relationship.

Employment Arrangements

The main type of arrangement is that of an employee. Characteristics of an employment relationship may include:

- Hours and days of work usually set by your employer, and you are generally required to work under the direction and control of that employer.
- You are paid a salary or an hourly rate and tax is deducted from your pay.
- Superannuation contributions are made by your employer.
- You will receive benefits such as annual leave, personal leave and long service leave.
- Legislation, Modern Awards, State Awards or enterprise agreements will likely legally dictate the minimum entitlements and pay you must receive from your employer.
- The terms and benefits of your contract of employment cannot be below the standards set out in legislation, enterprise agreements, State Awards or Modern Awards.

In some employment relationships, your employer may provide indemnity insurance cover (for example, if you are medical officer

in a public hospital) but you could also be required to maintain your own indemnity insurance, such as that provided by MIPS membership*.

Independent Contractor Agreement

Independent Contractors generally run their own business and are engaged by another business to perform a service. Characteristics of an independent contracting relationship may stipulate that:

- You are usually engaged to perform a specific task or work on a specific project.
- You are generally free to accept or refuse additional work from others.
- Under the agreement, you decide what hours to work to complete the specific task.
- You generally have an ABN and submit an invoice for work completed or are paid at the end of the contract or project.
- GST is payable with tax invoices issued by the contractor for services provided. Tax is not deducted from payments.
- You generally make your own superannuation contributions, but in some circumstances independent contractors may be entitled to be paid superannuation contributions (usually where the contractor is paid wholly or principally for their labour).
- You are generally legally responsible for your work and are liable for the cost of rectifying any defect in your work.
- You generally require your own indemnity insurance, such as that provided by MIPS membership*.

Services and Facilities Agreement

A service and facilities agreement is an agreement made by two parties that documents the agreement between them, where one party provides support for the other party for a fee to enable the other party to provide services to clients. Characteristics may include:

- Support services provided typically include space/rooms in the premises of a practice, taking bookings, collecting fees from clients, providing some equipment.
- The provider of the facilities may also be a practitioner providing services.
- The practitioner providing the service runs their own business rather than that of the practice.
- The practitioner may assign billing rights to the facilities provider and a percentage of the service fee (after the payment for the facilities and support) is then transferred to practitioner.
- You require your own indemnity insurance, such as that provided by MIPS membership*.

Employee v Contractor

It can be difficult to determine whether you are a contractor or employee at law. A person won't automatically be an employee or an independent contractor because of the type of work they do. If there is a dispute regarding the true nature of the relationship, the Courts will conduct an analysis of the whole relationship between the parties.

The characteristics discussed earlier in this article are some examples, but they are not an exhaustive list. The Courts will look in depth about the nature of the whole relationship before making a determination.

Let's look at a case study which will help show you how the courts analyse the nature of the engagement and the indicating characteristics the Courts use to determine whether someone truly is an employee and an independent contractor (Moffet v Dental Corporation Pty Ltd):

Facts

Dr David Moffet was a dentist who operated his own practice for 20 years. In 2007, Dr Moffet sold his dental practice to a company called Dental Corporation. At the time of the sale, Dr Moffet was engaged by Dental Corporation to provide dental services to them under an agreement titled "Services Agreement". The engagement term in the agreement was for five years until 2012. It was agreed that thereafter, Dr Moffet would continue to provide services for Dental Corporation. He continued to do so until he resigned in 2014. A few years later Dr Moffet commenced proceedings against Dental Corporation alleging that he was actually an employee and not a contractor.

Decision

One of the main characteristics analysed by the Court, was the level of control Dental Corporation exercised over Dr Moffet's work. The Court found that Dr Moffet was an independent contractor, with particular reference to the high degree of control which he exercised over his own work. The Court considered the totality of the relationship and found that the agreement did not have any terms which directed:

- The hours of work to be performed by Dr Moffet, the days or number of days he was required to work or the holidays he could take.

- The nature of the work to be undertaken by Dr Moffet was a general requirement that he provide 'Dentistry Services.'
- Dr Moffet did not need to ask permission to take days off or reduce the hours he worked on any particular day.

Things to remember

- Make sure you are aware and understand the nature of the relationship.
- Request a written contract.
- It is best to seek advice up front, rather than later when having to make a claim or defend a claim.

Any queries, [contact MIPS](#)

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