

Myths and Responsibilities – Contractors v Employees

Our last article in the NECANews detailed the importance of categorising your Contractors and Employees correctly as the penalties which can be imposed by the ATO, Work Cover and Fair Work Australia can be substantial. Below are some common misconceptions concerning the rules regarding Independent Contractor versus Employee that we often encounter with our business clients:

- ***“we pay my worker’s company or family trust therefore he/she can not be an employee”***
 - ▶ **Myth** - if your work agreement is with the actual person the ATO would consider this as a mere redirection of their wages
- ***“we have signed a “legal” contractors agreement so he/she must be a contractor”***
 - ▶ **Myth** - the classification as a contractor is dependent on the reality of the work performed. Where it is principally labour then it is more likely to be an employee
- ***“my worker has provided their ABN and a weekly invoice and therefore must be a contractor”***
 - ▶ **Myth** - many people have an ABN which may relate to another business. Just because they have an ABN does not mean they are a contractor
- ***“super contributions are only required for employees and not contractors”***
 - ▶ **Myth** - not necessarily. Super contributions are also required for individual contractors employed under a contract that is principally for labour even where the contractor provides an ABN
- ***“my worker and I agree that he/she will be a contractor so I bear no risk”***
 - ▶ **Myth** - be careful. You risk review from the ATO, Fair Work Australia and other government agencies

Even though the employer payroll obligations for employees can be quite onerous, it is better and safer to correctly identify from the outset whether your worker is actually deemed an employee rather than a contractor. This decision must be made from the beginning of their employment.

Should you wish to discuss the above issues in further detail, please do not hesitate to contact HW One on 07 3360 9600 or connect@hwone.com.au