

Shams Can Cost Employers

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There has recently been more of a crackdown on “sham contracting”. This is the term used to describe the situation when a worker is incorrectly labelled as an independent contractor when they are actually an employee.

Having contractors do the work within your business is often more attractive as they have different entitlements to an employee, and this usually amounts to a less onerous relationship from an employer’s point of view. With the downturn in the economy over the past few years, it has certainly become much more common to be known as a contractor rather than an employee.

As a business owner you may sign a contract saying that you are engaging a contractor, and obtain an ABN from that contractor to make payment to them. This alone is not enough to ensure you are actually engaging a contractor as opposed to an employee.

The reason that the correct categorisation is so important is that there are various additional payments and entitlements you must honour and insurances they must have if the business is actually employing, rather than contracting.

The test that the courts use is quite extensive and considers things such as ownership of tools of the trade and payment of superannuation. It is often not a clear-cut decision to make, and it will often be the case the employer needs to seek legal advice to ensure they have it right and are covered.

Failure to “get it right” can lead to hefty penalties - not just for incorrect remuneration, leave and superannuation entitlements, but more so if an employer is faced with a workplace injury. Without the correct insurances in place, it can be a very steep (and costly) uphill battle.

Employers should do themselves a favour and ensure their “employees” or “contractors” are exactly that.

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