

Paying super for contractors

Confused about whether or not you need to pay super for contractors?

If you employ and pay contractors mainly for their labour, then they are employees for superannuation guarantee (SG) purposes, and you may need to pay super to a fund for them. This is the case even if the contractor has an Australian Business Number (ABN).

You will need to pay super for contractors if you pay them:

- Under a verbal or written contract that is mainly for their labour (more than half the dollar value of the contract is for their labour)
- For their personal labour and skills (payment isn't dependent on achieving a specified result)
- To perform the contract work (work cannot be delegated to someone else).

If you enter into a contract with a company, trust or partnership you do not have to pay super for the person they employ to do the work.

Case examples: When a contractor is and isn't an employee for SG purposes.

Example 1

Contractor is an employee for SG purposes.

Andrew's Architecture has a contract with Taylor, a freelance drafts person to prepare architectural drawings and design concept work for 24 hours per week.

The contract stipulates that Taylor must perform the work. She has an ABN and invoices Andrew's Architecture weekly for the hours she works.

So, Taylor is considered an employee of Andrew's company for SG purposes because:

- Their contract is wholly for the labour and skills she provides
- Taylor performs the work herself and is paid according to the number of hours worked.

Assuming Taylor meets all other SG eligibility requirements, Andrew's Architecture pays SG contributions for her in addition to her salary.

Example 2

Contractor is not an employee for SG purposes.

Lindsey's Property Group needs to replace their building's switch board, so they contract Steve's Electrical Solutions for the job. The entire job is completed by one electrician from Steve's company.

As the contract is between two companies – Lindsey's Property Group and Steve's Electrical Solutions, the electrician completing this job is not an employee of Lindsey's Property Group for SG purposes.

So, Lindsey's Property Group does not have any SG obligations for the electrician or Steve's Electrical Solutions. This is the case even if Steve is a sole trader and does the work himself, because he was contracted to achieve a result.

Paying super for contractors.

Still unsure if you need to pay super for your contractor?

We understand that this can be confusing in certain cases. However, the Australian Tax Office (ATO) has some resources that can help you better understand when you do and don't need to pay super for contractors. These include:

- **Employee/contractor decision tool** which helps you work out if a contractor is an employee for super purposes
- **Superannuation guarantee eligibility decision tool** which helps you work out if they're entitled to super guarantee contributions.

How much super to pay for contractors?

The minimum super an employer must pay is the super guarantee percentage of the worker's ordinary time earnings. This is the labour component of the contract.

Employers do not need to include:

- Any contract payments that are for material and equipment
- Overtime for which the worker was paid overtime rates
- GST.

Paying an additional amount equal to the SG rate to the contractor, on top of their usual pay, does not count as a super contribution and will prompt a SG charge (SGC) to occur.

To avoid this penalty charge, you must make the SG contribution to the contractor's super fund each quarter. Please refer to our fact sheet '*Super made simple for employers*' on bussq.com.au for more information on paying superannuation for employees.

Can contractors and self-employed individuals join BUSSQ?

Absolutely. Contractors and self-employed individuals can join BUSSQ and enjoy the benefits of being a member of an industry fund with great long-term returns and insurance cover that suits their needs.

Call us on **1800 692 877** or visit bussq.com.au/employers for further details.

Choose BUSSQ

To find out more or to join simply scan the below QR code.



REMEMBER

- Having an ABN does not automatically exclude a contractor from being an 'employee' and therefore does not automatically release you from your superannuation obligations to that contractor.
- A person working for an hourly rate (labour only hourly rate contractor) is still an employee for superannuation purposes.
- Every contract is different. BUSSQ is not an authority on the relationship/contracts you have with your employees/contractors. We can give you some basic guidance, however you may need to contact the ATO.
- An employer cannot contract out of their superannuation guarantee obligations (i.e. they cannot agree to pay a higher rate of pay so the contractor can pay their own super).

We're here to help

Our team are available to help you get your super sorted.

Call **1800 692 877** or email super@bussq.com.au.

