

Super factsheet

Contractors and Superannuation

Contractors who are classed as employees under SG legislation have the same superannuation rights as any other employee. Employers contracting these people need to provide SG contributions to a fund of the contractor's choice, as well as offering salary sacrifice and voluntary contributions if these are offered to other employees. Superannuation payments made by employers for contractors covered by these regulations are generally eligible as tax deductions.

What contractors count as employees under SG Law?

SG legislation defines a person as an employee if they are an employee under common law. This is determined by factors such as the amount of control the contractor/employer has, the basis of a contract (results or hours worked), the ability to subcontract and who accepts the risk of the project.

A contractor is considered an employee under the following ATO guidelines:

- the individual is remunerated (either wholly or principally) for their personal labour and skills
- the individual must perform the contractual work personally (there is not right of delegation)
- the individual is paid by reference to hours worked rather than completion of the contract

The ATO website has a decision tool designed to help you understand whether your workers are employees or contractors so you can comply with your SG obligations.

What is the effect of using an intermediary, such as an employment agency?

A contractor, who counts as an employee under SG Law, is still entitled to superannuation benefits, including salary sacrifice, when an agency is involved. However, different agency relationships impact on who pays the super contributions and therefore who can claim them as a tax deduction.

The recruiting agency pays the super entitlements if the contract states that the contractor works for the agency, although doing work for a third party. The end user pays the super entitlements if the intermediary acts purely as an agent for the contractor such that the end user controls the contractor through the contract.

What about contractors not counted as employees under SG Law?

Only employees are entitled to SG super contributions, so contractors who don't fit the criteria as an employee don't get SG contributions of any type. However, these contractors may be entitled to tax deductions if they make voluntary contributions.

* The above is provided as general information only and is not to be considered as tax or superannuation advice. Before acting on the basis of this information, we recommend that you consult a professional adviser.