Employee vs. Contractor

1. **Statement**
   This standard outlines how to determine the status of a person as either an employee or a contractor and the PAYG implications.

2. **Scope**
   Compliance with this standard is mandatory.
   This standard shall apply to all employees, contractors and consultants within the Department of Health divisions and commercialised business units as well as Hospital and Health Services.

3. **Requirements**
   **Introduction**
   Queensland Health engages the services of people drawn from a very diverse range of employment and industry classifications, from labourers through to highly specialised practitioners. However, when all of these are brought to a common level by the imposition of income tax, all of the people considered within this business procedure can be classified into either one of two categories – an employee or a contractor.

   It is necessary to determine whether the engagement is a contract of service (employee) or a contract for services (independent contractor). In this context, the phrase “staff member” is taken to encompass persons who are working for remuneration within Queensland Health, and their status may be that of an employee or a contractor.

   It is important to recognise that the “employee” status need only be deemed to exist under the income tax law, for the PAYG and superannuation guarantee provisions to be applicable. Thus, the appointee might not be paid as an employee, but under income tax law he or she has to be regarded as an employee. The issue is not resolved by the manner in which remuneration occurs.

   Please refer to Business Procedure 5, “Foreign Resident Staff” if you need assistance to also determine the residence status of the appointee.

   **Obligations to withhold**
   Queensland Health is obliged to withhold PAYG tax from remuneration paid to employees. This obligation arises from the Taxation Administration Act 1953, Schedule 1 (“TAA53”), s.12-35:

   If the worker is eligible to be classified as a contractor, PAYG tax need only be withheld at the time of payment if the worker has not quoted his or her ABN. This obligation arises from TAA53, s.12-190(1):

   This is discussed at length in PAYG Business Procedure “PAYG Withholding Obligations”.
Why determine the status?
It is important to determine the status of the staff member as either an employee or contractor, because if they are deemed to be an employee, then PAYG tax must be deducted regardless of the payee’s position with respect to tax exemption unless and until the ATO advises otherwise. In addition, superannuation may also have to be provided in accordance with the superannuation guarantee legislation.

The existence of an ABN will be irrelevant if the facts of the engagement lead to a conclusion that the person is deemed to be an employee. Furthermore, a statement by supplier form is ineffective when the relationship is one of employment, because the form is only relevant to a supply situation with the payee carrying on an enterprise. It should be further noted that the courts and tribunals have awarded all of the benefits of employment, including termination payments, and severance and leave entitlements, to workers whom they have deemed to be employees, regardless of the label they work under.

Classification as an employee
Firstly if the work to be performed by one person for another is subject to the control and direction of the latter person in the manner of carrying out the work, the person doing the work is deemed to be an employee rather than a contractor, and that person's reward would be regarded as wages.

Lecturers for a weight control organisation have been held to be employees because the organisation controlled and directed the nature and conduct of their work. In determining whether an employer/employee relationship existed, the Privy Council held that where there is a written contract between the parties, a court is confined to a consideration of the terms in the light of surrounding circumstances.

Secondly, the most important criterion is the degree of control over the manner in which the person performs the work. Finally, where there is a term in a written contract purporting to define the status of a person engaged under it, that provision will not be given effect if it contradicts the agreement as a whole.

The Supreme Court of Western Australia has held that a real estate agent was an employer because the agent who engaged representatives provided office accommodation and facilities (e.g. telephone) and workers compensation, deducted PAYE tax instalments from commissions paid to the representatives and paid, on behalf of the representatives, various fees that were required to be paid by those representatives.

Classification as a contractor
A contractor undertakes to produce a given result but is not in the actual execution of the work, under the order or control of the person or persons for whom the work is performed.

Once the staff member is rightfully classed as a contractor, the obligation to withhold PAYG tax is limited to those situations in which an ABN is not quoted and a statement by a supplier is not provided.
In this case PAYG tax must be withheld from the gross payment (GST inclusive, if there is any GST), if the supply is associated with a business enterprise having an Australian presence. This and the rate of tax are discussed in PAYG Business Procedure “Withholding Obligations”.

In instances where a statement by supplier has been provided, it is important to note, the payer must have no reasonable grounds to believe that the statement is false or misleading in a material particular: TAA53 s.12-190(6)(b).

For example, a tick against the supply being a hobby activity would be rejected if the payee is remunerated for continuous work. Also, since we have reached the point of classifying the worker as a “contractor”, it is highly likely that the worker is indeed carrying on an enterprise, and therefore should not be signing the statement.

If an ABN has been quoted, Queensland Health is not obliged to withhold PAYG tax from the payments. It is to be checked against the Australian Business Register to ensure that the registration is valid and still current.

**How to decide?**

There is little authority to suggest that a worker can’t be engaged and paid as an employee if the payer so chooses, however by comparison there is plenty of authority to indicate that at times a worker must be paid as an employee. Whether a worker is an employee at common law depends on whether the nature and circumstances of the contractual arrangement between the parties give rise to an employment relationship.

SGR 2005/1 outlines indicators of employment under common law as shown below:

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Employee</th>
<th>Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control</td>
<td>The entity has the right to control how, why, and when the work is done.</td>
<td>The worker has the right to control how, why, and when the work is done.</td>
</tr>
<tr>
<td>Integration</td>
<td>The worker does not carry on business on their own account.</td>
<td>The worker carries on business on their own account.</td>
</tr>
<tr>
<td>Results</td>
<td>The worker is not hired to achieve a specified result.</td>
<td>The worker is hired to achieve a specified result.</td>
</tr>
<tr>
<td>Delegation</td>
<td>The worker doesn’t have the right to subcontract the work.</td>
<td>The worker has the right to subcontract the work.</td>
</tr>
<tr>
<td>Liability</td>
<td>The entity bears all or most of the risk of costs arising out of injury or defect in the work.</td>
<td>The worker bears all or most of the risk of costs arising out of injury or defect in the work.</td>
</tr>
<tr>
<td>Assets and Expenses</td>
<td>The entity provides the assets, equipment, and tools for the work, and incurs the expenses.</td>
<td>The worker provides the assets, equipment, and tools for the work, and incurs the expenses.</td>
</tr>
<tr>
<td>Indicator</td>
<td>Employee</td>
<td>Contractor</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Termination</td>
<td>The entity has the right to suspend or dismiss the person engaged subject to state or Commonwealth legislation.</td>
<td>The entity can only terminate the contract without penalty where the worker has not fulfilled the conditions of the contract.</td>
</tr>
<tr>
<td>Exclusive Service</td>
<td>The entity has the right to the exclusive services of the person engaged.</td>
<td>The entity doesn't have the right to the exclusive services of the person engaged.</td>
</tr>
<tr>
<td>Employment Benefits</td>
<td>The entity provides annual, sick and long service leave, and other award-based employee benefits.</td>
<td>The worker is not entitled to annual, sick and long service leave and other award-based employee benefits from the entity.</td>
</tr>
<tr>
<td>Uniform</td>
<td>The worker is required to wear the entity’s uniform.</td>
<td>The worker is not required to wear the entity’s uniform.</td>
</tr>
</tbody>
</table>

Attached as Appendix A is a questionnaire intended to assist the determination of the status of a worker, where it is not really intended that the worker be taken on as an employee.

Appendix B is a presentation of the information in a tabular format.

In addition, the Australian Tax Office (ATO) provide an online tool to help determine whether or not a worker is classified as an employee or a contractor. If there is uncertainty about the status of a worker use this tool below and contact the Taxation Unit for further guidance. [ATO Employee or Contractor Decision Tool](http://www.ato.gov.au/)

**Taxation of employee**

PAYG must be withheld at the appropriate rate, from each payment. Withholding tables are available for this purpose, and have been incorporated into the payroll system.

A payment summary must be issued in the same manner as is done for any typical employee. The employee will have to lodge an Australian income tax return in the usual manner, to reclaim the tax withheld.

**Taxation of contractor**

The fact that a person is recognised as a contractor means that the person is carrying on a business, which will be subject to rules different to those applicable to an employee. Since the contractor is carrying on the business through an Australian enterprise, then he must either quote his ABN, or face PAYG withholding.

If the person is properly classified as a contractor and he has his own ABN, then he can be paid through Accounts Payable without any PAYG withholding. The ABN should be checked under the Australian Business Register (available at [http://www.abr.business.gov.au](http://www.abr.business.gov.au)) before the first payment is made.
Use of an employment agency

An employment agency acts to provide the contractor’s services and charges Queensland Health for such. Typically, the direct unit rate will be higher than what Queensland Health would have to pay if the appointee was employed directly by Queensland Health, because the agency has to cover on-costs as well. However, the worker will be paid by the employment agency and Queensland Health will be invoiced by the agency. The withholding obligations (in respect of the worker’s remuneration) are thereby passed over to the employment agency.

The employment agency covers all of the PAYG withholding issues (if any), since it is the employer. These obligations arise from TAA53, s.12-60.

The agency or labour hire company will be paid in the same way as any other supplier is paid.

It should be noted that this relationship will not apply to those circumstances under which the worker is paid directly by Queensland Health.

Labour hire arrangements commonly involve at least two contracts. A user of labour (the client) typically contracts with a labour hire firm (the agency) for the provision of labour of a specified kind. The labour hire firm does not contract with the client to perform the work; it merely contracts with the worker and pays the worker. The worker is not, ordinarily, an employee of the client. However, the full court of the Federal Court found that a cleaner who was thought to be employed through a labour hire company was really an employee of the principal, because of the extent to which the principal treated the worker in the same manner as its factual employees. The employer is the person having rights on the work produced and bearing the relative responsibility and risks. (Damevski v Giudice 2003 FCAFC 252)

Therefore, where an agency is involved, each case should be examined carefully to see whether the functions of employer were exercised by Queensland Health or by the agency. In cases of international hiring out of labour, the employer functions may be exercised by the user entity to a large extent. In these circumstances, the user entity would be regarded as being the economic employer of the expatriate worker. Where the services rendered by the worker are more integrated into the business activities of the user entity than those of the intermediary, the user entity would be regarded as being the economic employer of the expatriate worker.

Company or business name

If the contractor provides services under a company or business name then it may have an ABN and it may be registered for GST. If an ABN is quoted, it should be checked against the ABR Register to confirm that the registration is both correct, and current.

If there is no ABN quoted, and Queensland Health is just provided with an invoice, then it will be necessary to look at alternative documents. To this end, please refer to Business Procedure “PAYG & Withholding Obligations”. The absence of an ABN is discussed at length there.

Care must still be exercised if a worker is using a business name (and not a company) and is quoting an ABN. The mere existence of an ABN does not negate any need to look further into the relationship. It does not automatically exempt the worker from the PAYG requirements. It is necessary to look to the nature of the contract. The use of business name and ABN may be totally valid in the situation where the business is supplying as a business, but an employed worker cannot use the business name to avoid PAYG when the relationship is, or is capable of being deemed to be, one of employer-employee.

A company is a separate legal entity and cannot be an employee. Therefore, if the contract is with a company that is providing the services of the worker, there shouldn’t be any need to look any further at the arrangement, so long as it is the company that has been engaged and is being paid.
From that point on, the worker should generally be an employee of the company. (Note the qualification in Damevski’s case – see page 6 above.)

Appendix A – Questions and Answers

The questions are presented here for information and reference. You should use the accompanying worksheet (see Appendix B), from which a score will be obtained, indicating the appropriate classification for the appointee. For each question, a simple 'yes' or 'no' answer is required, together with an emphasis rating. The emphasis rating is explained in the instructions contained in the worksheet. These are reproduced in Appendix C.

1. Is the worker running his own business? (The business self-assessment questionnaire released by the ATO may assist here.) Where the work that is to be performed is normally performed by the business, a strong indication of “contractor” will exist. On the other hand, while the worker may well be carrying a business, this circumstance may be completely irrelevant if the work to be performed is unrelated or dissimilar to that normally done by the business.

2. Could the worker make an independent career out of the activities? (Is there sufficient work of this nature outside, for a career, occupation or profession to be supported?) The type of work may be too narrow for a business enterprise to be made out of it. A “no” answer would suggest an employee-employer relationship.

3. Could the worker have the potential to make a profit or loss out of the activities at a business level? This question provides an indication of the depth, if any, of the activity, in a business environment, and whether or not such an activity is likely to succeed in that environment. (if “no”, suggest employee)

4. Does Qld Health assume the liability for negligence? This refers to the issue of who is liable in the event of litigation by a patient or a member of the public for an undesirable and unintended outcome due to the negligence of the worker. Generally, employees are covered, with the employer having to carry, and cover, any risk. Therefore, an affirmative answer is more likely to indicate that the worker is engaged in an employer-employee relationship. Conversely, a negative answer may point to the worker being a contractor.

5. Were the services of the worker obtained as a result of an employment advertisement? It may be difficult to assert that the engagement is not as an employee where a “yes” answer is applicable. From TR2005/16, “the circumstances surrounding the formation of the contract may assist in determining the true character of the contract. Thus, if a contract comes into existence because the contractor advertises his or her services to the public in the ordinary course of carrying on a business or as a result of a successful tender application, the existence of a principal-v-contractor relationship is inferred. Conversely, if the contract is formed in response to a job vacancy advertisement or through the services of a placement agency, the existence of an employer/employee relationship is inferred.”

6. Were the services of the worker obtained through a tender process? It is unlikely that an employee’s services will be obtained through a competitive tender process. Therefore, a “yes” response would suggest that the worker is a contractor.

7. Does the worker offer his or her [same] services to the public at large? The degree to which a person is able to offer his or her services to the general public, or to sections within the
public, provides additional evidence of the level of dependency that the worker may have on
the business to whom the worker is providing services. If the worker does not offer his or
her services widely, then perhaps the worker is an employee.

8. **Is the worker to be reimbursed for all or any expenses incurred in the engagement?** An
employee is generally reimbursed by the employer for costs incurred in the course of duties.
A contractor, on the other hand, generally incurs the expenses of the business (project)
unless the conditions of contract specifically provide for expenditure reimbursement.

9. **Are there any conditions relating to termination of the engagement?** Conditions attaching to
the termination of the engagement may indicate that the worker has been engaged as an
employee rather than as a contractor. The contractor will typically be engaged to carry out a
set task or series of tasks, whereas an employee is engaged for more continuous duties.
The person for whom the work is being done is typically free to terminate the contract when
the work is complete, or if the work is not being done. An employer has to face conditions
based on industrial legislation and awards. However, the importance of this question is
dependent on the next.

10. **Are these referable to any award or legislation?** The existence of award conditions relating
to the termination of the contract would imply that the worker is an employee.

11. **Does the health service facility manager have control over how the work is to be
completed?** A contractor is generally instructed on what is required, and left to provide the
desired result without, or with diminished, supervision. How the contractor actually goes
about producing the goods is usually at his or her discretion. To further complicate this
important area, what may appear to be supervision may only be a situation of close
cooperation. If the worker has a little latitude in the way in which the work is to be done or
completed, and the payer has a lot of scope for the exercise of control, the more likely
position is that the worker is an employee.

12. **Is the worker providing skilled labour or labour requiring qualifications?** The problem here is
that someone who possesses a high degree of specialisation may just have to work without
the ordinary levels of supervision, because the supervising staff don’t have the same depth
of knowledge and therefore simply cannot supervise. This question needs to be considered
in conjunction with Q.11, which might, on its own, suggest employment if answered
affirmatively. If Q.11 is answered “yes”, this question (Q.12) will have a diminished effect.

13. **Is the worker able to refuse work?** An employee usually cannot simply refuse to do work
asked of him or her, whereas a contractor can, generally being much freer to accept or
refuse work.

14. **Will the worker gain any entitlements to any form of leave, such as annual leave or sick
leave?** A contractor usually does not gain any entitlements to any form of leave. The
contractor has to cover his own periods of absence. The existence of an entitlement to paid
leave would therefore suggest an employee-employer relationship.

15. **Is the worker merely working in the business of Qld Health?** What “merely working in the
business” is looking at is that an employee works in the business of the payer. Their work is
an integral part of the business. Although the work of a contractor is done for the business,
it is not integrated into it but is ancillary to it. Therefore, a “yes” answer suggests
employment.

16. **Is the worker working absolutely at the direction of Qld Health?** The employer has an
implied right in industrial law to direct and control the work of an employee. The employee
works in the business of the employer and the employer is free to manage its business as it
sees fit. A payer has a right to specify how the contracted services are to be performed. However, such control must be specified in the terms of the contract, otherwise the contractor is free to exercise his discretion.

17. **Does the worker have a high degree of autonomy and/or independence?** This can be one of the shortcomings of the “control test”. A highly skilled employee may have to function with a high degree of autonomy. A contractor may also have a high degree of autonomy merely because he is only obliged to provide a finished product and the payer is unconcerned as to how that conclusion is achieved. This question needs to be examined carefully, and in conjunction with Q.12 above.

18. **Does the worker have to bear his or her own costs throughout the engagement?** Where the worker does not bear any of the costs in carrying out his or her work, he or she is more likely to be an employee.

19. **Does Qld Health specify how the services are to be performed?** This question must be answered from the point of view of control and direction rather than a set of specifications or a bill of quantities and the like. It is therefore related to the amount of discretion that the worker may have with respect to the successful completion of the work or the project. A “yes” answer may suggest employment.

20. **Is the worker under direct supervision most of the time, or at all times?** This is also looking at the control aspect of the engagement. A high degree of control will suggest employment.

21. **Are the services to be provided by the worker quite specific, and discrete?** An employee’s services are to be provided in a continuum, although the duties may be varied from time to time. A contractor is typically engaged for a discrete set of services, or for a discrete time interval.

22. **Are the services non-discrete, and ongoing?** An employment contract, or a contract of service, is a continuous arrangement (at least, for the duration of the contract); it is non-discrete. A contract for services on the other hand is typically for specific work, after which the contract may cease.

23. **Will the worker accrue any benefits such as allowances?** Ordinarily, a contractor does not accrue any benefits in the form of allowances including overtime, meals, travel. These are usually paid to employees only. Therefore, a “yes” will suggest an employee relationship.

24. **Is payment to be made regularly and in fixed amounts irrespective of the progress?** Payment in this manner will usually be made to employees, who are paid on a time basis rather than on the basis of progress of a supply. This is not always conclusive; employees can be remunerated solely on a commission basis or under piece rates, yet still be employees.

25. **Will the worker be given any fringe benefits such as the use of a mobile phone, accommodation, or the use of a vehicle?** Ordinarily, a contractor does not accrue any fringe benefits. These are usually provided to employees only. Therefore, a "yes" will suggest an employee relationship. If a benefit is provided to a prospective contractor, its relevance in the context of this question should be determined from the value of the benefit, the duration of the benefit, and the granting of the same benefit to other persons, namely employees, within Queensland Health.

26. **Is payment dependent upon successful completion of, or perhaps a stage of, the work?** A positive answer to this question should be viewed as a strong indication that the relationship is that of principal/contractor.
27. Can the worker subcontract the work to someone else? An employee is generally not permitted to sub-contract his services out to another party. Rather, an employee is required to provide his services in performing the work himself. Unless the terms of contract forbid a contractor to do so, the contractor is quite possibly free to sub-contract the work out. This will necessarily depend on the type of work that is involved or required, of course.

28. Does the worker have to perform the work by himself or herself, or with the help of a team of which he or she will be a member? This question relates to delegation. An employee has no inherent right to delegate tasks to another. However, there may be a power to delegate some duties to other employees. A contractor may delegate all or some of the tasks to another person, and may employ other persons. The employee can work as part of a team; that is no so much of an issue. The issue is the scope, if any, to delegate the work out. A “yes” answer would suggest that the worker is more an employee than a contractor.

29. Is payment to be made regardless of a specific outcome? Payment to employees is most often based on the period of time worked regardless of the result achieved. Payment to a contractor is dependent on the performance of the contracted services.

   Nevertheless, an employee can also work on ‘piece rates’ or commission, so this may have to be factored into the answer. A “yes” answer would most likely suggest an employment relationship.

30. Can additional services be requested without extra remuneration, under the agreement? An employer is generally free to seek alternative services from an employee (within limitations perhaps) without having to pay any extra compensation. Under a contract for services though, the services are more or less locked in, with respect to price and extent of the work, so that if the payer wants extra work done, outside the scope of the contract, extra remuneration may well have to be paid. A “no” answer would therefore suggest that the worker is a contractor.

31. Does the worker assume legal and commercial risks in respect of the work, such as public liability in the event of an accident? An employee generally bears no legal risks in respect of the work; since the employee works in the business of the employer, the employer is legally responsible for any work performed by the employee. A contractor bears legal risk in respect of the work. He has the potential to make a profit or loss, and must remedy any defective work at his own expense. Therefore, a “yes” answer would suggest that the worker is a contractor.

32. Does the worker have to rectify any defective work at his or her own expense? In an employment situation, the employer generally bears the risk of the costs arising out of any defective work produced or the injury suffered by the worker during the performance of his or her duties. On the other hand, a contractor bears the commercial risk and responsibility for any poor workmanship or injury sustained in the performance of work. A contractor often carries his own insurance and indemnity policies.

33. Does Qld Health assume legal risks in respect of the work, such as public liability in the event of negligence or an accident? A “yes” answer here would usually suggest an employment relationship, but the assumption of risk may have been specifically negotiated and included in the terms of the agreement, with a contractor.

34. Does the worker have to provide his or her own tools and/or equipment? The employer, except when specifically agreed otherwise, usually provides tools and equipment. Generally, a contractor provides his own tools and equipment.
35. **Do the tasks have to be performed on Qld Health’s premises?** A worker under a contract of service (employee) will generally perform the tasks on the payer’s premises using the payer’s assets and equipment. A “yes” favours an employment relationship, but a contractor may also be compelled to work on the payer’s premises as distinct from his own business premises. This question needs to be answered with some thought about the facts of the engagement, and the reasons for why, or why not, the work has to be performed on Queensland Health’s premises.

36. **Does Qld Health have a lawful authority to command how the work is to be performed?** From TR1999/13, “Under a contract of service, the payer usually has the right to direct the manner of performance.

Of course, where the nature of the work involves the professional skill or judgment of the worker, the degree of control over the manner of performance is diminished. What is important is the lawful authority to command that rests with the payer. The hallmark of a contract for services is said to be that the contract is one for a given result. The contractor works to achieve the result in terms of the contract. The contractor works on his/her own account.” Courts in more recent times have ruled that it is not so much the exercise of control that is important as the right to exercise control. A “yes” answer favours a master/servant relationship.

37. **Are there materials required, that the worker has to provide or supply?** Materials used in the preparation, production and completion of a person’s job, as an employee, are usually provided for by the employer. A contractor is a separate entity (an individual, partnership, trust or company) that agrees to produce a designated result for an agreed price. In most cases the contractor is paid for results achieved, and provides all or most of the necessary materials and equipment etc. necessary to complete the work. Of course, this is not a hard and fast rule; contracts may specifically provide that the principal is to pay for the materials separately and provide these to the contractor to work on or with. Generally, a “yes” answer would lead one to conclude that the worker may be a contractor.

38. **Does the worker have to work to set hours, or at least within the standard span of hours?** Employees typically work for set hours, prescribed under an award or labour agreement, whereas contractors are not locked into the same rules and can independently choose their own hours. While this is not always hard and fast, it can lend support in an assessment of the independence of the worker.

39. **Is the worker engaged through, and paid by, an agency?** (It is important here that the worker is not paid directly by Queensland Health, if a yes answer is appropriate, because of the PAYG obligations. The agency should be paid, and the worker will then be paid by the agency as the agency’s employee.) A worker engaged through an agency, including the worker’s own corporate business entity, would normally be seen as a contractor. The facts of the engagement must be examined carefully.
## Appendix B – Determining Employment Status (Employee –v- Contractor)

<table>
<thead>
<tr>
<th>Feature of Relationship</th>
<th>Employee – Contract of Service</th>
<th>Independent Contractor Contract for Services</th>
<th>Discussion / Facts</th>
<th>Favours</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Lawful authority to command</td>
<td>Under a contract of service, the payer usually has the right to direct the manner of performance. Where the nature of the work involves the professional skill of judgement of the worker, the degree of control over the manner of performance is diminished. What is important is that the lawful authority to command rests with the payer.</td>
<td>The hallmark of a contract for services is said to be that the contract is one for a given result. The contractor works to achieve the results in terms of the contract. The contractor works on his/her own account.</td>
<td>The doctors are ultimately controlled by the Medical Superintendent. As professionals, they will use their own judgement and skill to determine what is required from a clinical perspective. The doctors are paid regardless of any specific outcome or result.</td>
<td>Employee.</td>
</tr>
<tr>
<td>2. How is the work performed?</td>
<td>Tasks are performed at the request of the employer. The worker is said to be working in the business of the payer.</td>
<td>An independent contractor enters into a contract for a specific task or series of tasks. The contractor maintains a high level of discretion and flexibility as to how the work is to be performed. However, the contract may contain precise terms as to materials used and methods of performance, yet still be one for services.</td>
<td>They are required to provide medical services at the request of the hospital. They remain on call to assist where the hospital requires their services. They may choose the times at which they will work within a span of hours.</td>
<td>Employee.</td>
</tr>
</tbody>
</table>

PRINTED COPIES ARE UNCONTROLLED
<table>
<thead>
<tr>
<th>Feature of Relationship</th>
<th>Employee – Contract of Service</th>
<th>Independent Contractor Contract for Services</th>
<th>Discussion / Facts</th>
<th>Favours</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Risk</td>
<td>An employee bears little or no risk. An employee is not exposed to any commercial risk. This is borne by the employer. Further, the employer is generally responsible for any loss occasioned by poor workmanship or negligence of the employee.</td>
<td>An independent contractor stands to make a profit or a loss on the task. They bear the commercial risk. The contractor bears the responsibility and liability for any poor workmanship or injury sustained in the performance of the task. Generally, a contractor would be expected to carry their own insurance policy.</td>
<td>The State will carry the risks. The doctors would not be expected to carry their own insurance policy.</td>
<td>Employee.</td>
</tr>
<tr>
<td>4. Place of performance</td>
<td>A worker under a contract of service will generally perform the tasks on the payer’s premises using the payer’s assets and equipment.</td>
<td>A contractor generally provides all of his own assets and equipment.</td>
<td>The doctors will work in a Queensland Health hospital when required The doctors will use equipment supplied by the hospital, including a motor vehicle and a telephone provided.</td>
<td>Neutral, but favouring an employee.</td>
</tr>
</tbody>
</table>

**FMPM: Employee vs. Contractor**

Chief Finance Officer
System Support Services
09/06/2015

PRINTED COPIES ARE UNCONTROLLED
<table>
<thead>
<tr>
<th>Feature of Relationship</th>
<th>Employee – Contract of Service</th>
<th>Independent Contractor Contract for Services</th>
<th>Discussion / Facts</th>
<th>Favours</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Hours of work</td>
<td>An employee generally works standard or set hours.</td>
<td>An independent contractor generally sets his own hours of work.</td>
<td>The doctors are required to work a set number of hours, although within a span of hours.</td>
<td>Employee</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>It is at the doctor’s discretion as to the time that they work, within the span of hours.</td>
<td>Neutral, but possibly favours contractor.</td>
</tr>
<tr>
<td>6. Leave entitlements</td>
<td>The contract generally provides for annual leave, long service leave, sick leave, and other benefits and/or allowances.</td>
<td>Generally, an independent contract does not contain leave provisions.</td>
<td>The doctors are provided with a motor vehicle and telephone.</td>
<td>Employee.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Their contracts do not contain leave provisions, though given the duration of the agreement this is not indicative either way.</td>
<td>Neutral.</td>
</tr>
<tr>
<td>7. Payment</td>
<td>An employee is generally paid an hourly rate, piece rates or award rates.</td>
<td>Payment to an independent contractor is based upon performance of the contract.</td>
<td>The doctors are paid a daily amount</td>
<td>Employee.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>They are paid regardless of a specific outcome.</td>
<td>Employee.</td>
</tr>
<tr>
<td>8. Expenses</td>
<td>An employee is generally reimbursed for expenses incurred in the course of employment.</td>
<td>Generally, an independent contractor incurs his own expenses.</td>
<td>The doctors are provided with motor vehicles, telephones, accommodation and travel support.</td>
<td>Employee.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Other reimbursement is uncertain.</td>
<td>Neutral.</td>
</tr>
<tr>
<td>Feature of Relationship</td>
<td>Employee – Contract of Service</td>
<td>Independent Contractor Contract for Services</td>
<td>Discussion / Facts</td>
<td>Favours</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------------------------------</td>
<td>------------------------------------------</td>
<td>-------------------</td>
<td>---------</td>
</tr>
<tr>
<td>9. Appointment</td>
<td>An employee is generally recruited through an advertisement by the employer.</td>
<td>An independent contractor is likely to advertise his services to the public at large.</td>
<td>The doctor is appointed through direct contact by the Medical Superintendent. The doctor is engaged as a result of a search in medical journals. Details of the doctors’ engagements are uncertain.</td>
<td>Employee.</td>
</tr>
<tr>
<td>10. Termination</td>
<td>An employer reserves the right to dismiss an employee at any time, subject to State or Commonwealth legislation.</td>
<td>An independent contractor is contracted to complete a set task. The payer may only terminate the contract without penalty where the worker has not fulfilled the conditions of the contract. The contract usually contains terms dealing with defaults made by either party.</td>
<td>The agreement does not contain any specific terms, only the engagement is for a set period.</td>
<td>Neutral.</td>
</tr>
<tr>
<td>Feature of Relationship</td>
<td>Employee – Contract of Service</td>
<td>Independent Contractor Contract for Services</td>
<td>Discussion / Facts</td>
<td>Favours</td>
</tr>
<tr>
<td>-------------------------</td>
<td>---------------------------------</td>
<td>-----------------------------------------------</td>
<td>--------------------</td>
<td>---------</td>
</tr>
<tr>
<td>11. Delegation</td>
<td>An employee has no inherent right to delegate tasks to another. However, there may be a power to delegate some duties to other employees.</td>
<td>An independent contractor may delegate some or all of the tasks to another person, and may employ other persons.</td>
<td>The doctors are required to perform their medical duties themselves, within the required timeframe and while it is not expressly stated in the engagement letter we understand that it is implicit in the arrangement that they cannot delegate these tasks to other doctors.</td>
<td>Employee.</td>
</tr>
<tr>
<td>12. Benefits</td>
<td>An employee may be entitled to fringe benefits such as accommodation, use of a mobile phone, use of a vehicle.</td>
<td>An independent contractor is less likely to be provided with fringe benefits. Rather, the contractor is more likely to be expected to provide for himself, with costs etc being calculated into the agreed rate.</td>
<td>The doctors are being provided with accommodation, and the use of telephones and vehicles.</td>
<td>Employee</td>
</tr>
</tbody>
</table>

4. **Related legislation and documents**

- Taxation Ruling TR 2005/16 “Income tax: Pay As You Go – withholding from payments to employees”
• Taxation Ruling TR 2003/11 “Income tax: the interpretation of the general exclusion provision of the Dependent Personal Services Article, or its equivalent, of Australia’s Double Tax Agreements”
• Taxation Ruling TR 1999/10 “Income tax and fringe benefits tax: Members of Parliament – allowances, reimbursements, donations and gifts, benefits, deductions and recoupment’s”
• Taxation Ruling TR 1999/13 “Income tax: tax instalment deductions”
• Superannuation Guarantee Ruling SGR 2005/1 “Superannuation Guarantee: Who Is An Employee?”
• Determine the status of your workers, Australian Taxation Office Website
• PAYG withholding and labour hire firms, Australian Taxation Office Website
• How to determine if workers are employees or independent contractors, Australian Taxation Office Website
• Taxation Administration Act 1953, Schedule 1: sec 10-5(1), sec 12-1(1), sec 12-35, sec 12-6

Version Control

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>16/11/2005</td>
<td>Peter Curtis</td>
</tr>
<tr>
<td>2</td>
<td>04/06/2007</td>
<td>Peter Curtis</td>
</tr>
<tr>
<td>3</td>
<td>04/09/2007</td>
<td>Peter Curtis</td>
</tr>
<tr>
<td>4</td>
<td>02/06/2009</td>
<td>Peter Curtis</td>
</tr>
<tr>
<td>5</td>
<td>28/04/2011</td>
<td>Peter Curtis</td>
</tr>
<tr>
<td>6</td>
<td>21/01/2014</td>
<td>Richard Baker</td>
</tr>
<tr>
<td>7</td>
<td>1/06/2015</td>
<td>Policy Rationalisation Project</td>
</tr>
</tbody>
</table>