

Independent Contractor

Frequently Asked Questions

I have been offered a job as an independent contractor, rather than an employee. What is the difference for me?

One of the most important differences between a contractor and an employee is you are not protected by employment law if you are a contractor.

If you are an employee you have minimum legislative entitlements such as annual leave, sick leave and bereavement leave, provided by the Holidays Act. The Employment Relations Act protects you from being dismissed unless there are substantive justifications and a fair process is followed. And as an employee you are entitled to parental leave provided by the Parental Leave and the Employment Protection Act.

As a contractor the terms and conditions of your engagement rely solely on negotiation and what is contained in your contract. Your contract can be terminated on notice at any time, and you have no automatic rights to leave.

As an independent contractor you are responsible for paying your own tax and ACC levies, and usually responsible for invoicing the practice for your income. Employees have PAYE and ACC levies deducted from their wages or salary.

There are several advantages of being an independent contractor. These include:

- You can claim some work related expenses from Inland Revenue, which you wouldn't be able to do if you were an employee.
- You may have more flexibility in your working arrangements – you may be able to turn down work if it does not suit you.
- You may be able to negotiate a higher rate of pay because your employer does not have to provide you with pay when you are away from work (holidays or illness).

I'm becoming an independent contractor for the first time – what do I need to know?

It would be a good idea to consider getting accounting advice when first setting up as an independent contractor.

As an independent contractor you will be responsible for paying your own income tax and ACC levies. You will also be required to be GST registered if you earn over \$60,000 per annum. The Inland Revenue Department (IRD) has useful information booklets to assist you in understanding your obligations, including booklets called "Smart Business", and "Self-employed or an employee – how to work out your tax status". Both of these booklets can be downloaded from their website at www.ird.govt.nz.

As an independent contractor, the IRD can audit you at any time. So it is essential that you keep thorough accounts of your earnings and work-related outgoings. Keep copies of all of your invoices and expense receipts. It is a good idea to keep a bank account for all business activities separate from your personal accounts.

You will need to set up a contracting structure. You could either operate as a sole trader or set up a limited liability company. There are advantages and disadvantages to both approaches, but a sole trader is the simplest structure.

You should also consider liability insurance. You could be found personally liable for damage you cause to the practice's property, or losses they suffer resulting from your work.

What are my ACC obligations if I am self employed?

As a self employed contractor you are automatically covered by ACC CoverPlus. Once you file your first tax return as a contractor ACC calculates your levy and invoices you. They also calculate your levy for the year ahead based on the same income. This means that you are required to pay two years worth of ACC levy the first time you are invoiced by ACC.

You do have the option to pay extra for ACC CoverPlus Extra. ACC Cover Plus provides you with weekly payments of up to 80% of your liable earnings. Payments start one week after your injury. ACC Cover Plus Extra allows you to tailor the level of cover for lost earnings. You will receive 100% of the amount of the agreed lost earnings without the one week stand down.

More information can be found on ACC's website: <http://www.acc.co.nz/for-business/self-employed>

Do I need a written contract?

Although a written contract is not a legal requirement, an independent contractor would be careless not to ensure that their terms and conditions of engagement are put in writing. As your engagement is not protected by employment law, all of your rights and obligations are covered by what is agreed between you and the practice. This needs to be put in writing to avoid any misunderstandings in the future.

If you were engaged as an employee, there is a legal obligation for your employment agreement to be in writing.

What should be in my contract?

Your contract should include the following:

- Hours of work
- How much you will be paid. This may be a salary, wage, per session rate, per consultation rate or a combination of pay methods
- How and when you will be paid. For example; will you be required to raise a weekly tax invoice?
- Termination clause
- Other costs that will be covered by the practice (APC, College fees etc)
- How disputes will be resolved
- How holidays and leave arrangements are to be made

The NZMA has sample independent contracts available on our website.

It is advisable to have a third party review your contract before signing it. The NZMA is able to offer this service. Legal advice should also be considered.

The contract provided to me has a restraint of trade Clause in it – why?

A restraint of trade clause is designed to prevent unfair competition after the expiry of the contract. It reflects the fact that you will have access to information about the patients of the practice, and that it would usually be unfair to turn that information to your personal gain by luring patients away from the practice in the event that you establish a rival practice or join another local practice.

Restraints of trade usually restrict the contractor either for; a time period, a geographical location or both. Restraints of trade are often found to be unlawful if they are too restrictive on the contractor. You have to be able to reasonably continue working in your profession when leaving a practice.

If you are concerned about the restrictiveness of your restraint of trade, the NZMA or a legal representative could advise you before signing your contract.

The NZMA also has more information available on restraints of trade as a advisory service information flyer on our website.

What are the common pay structures offered to GP independent contractors?

There is no correct basis for payment for GPs. However the most common ways that a contractor is paid are:

- Fixed session rate
- Fixed hourly rate
- Percentage of gross fees charged or received by the contractor
- Fixed amount per patient seen
- Annual salary (for long term contractors)

What laws apply to me as an independent contractor?

As employment law does not apply to independent contractors it is general civil law that determines most of the rights and obligations of independent contractors.

The law relating to health and safety applies to both employees and independent contractors.

Why would a practice engage me as an employee when an independent contractor seems to pose less risk for the practice and places less obligation on the practice?

In legal-speak an employment agreement is a 'contract of service' while an independent contract is a 'contract for services'

There are tests that the Employment Relations Authority and the Employment Court use to determine the true nature of the relationship. These include:

- The intention of the parties
- The degree of control the practice has over the contractor
- The equipment the person is required to provide
- The wording used in the agreement
- The way the contractor is paid and tax deducted
- The degree of flexibility the contractor has to select hours and decline work.

A practice can only engage somebody as an independent contractor if it is a true contractor relationship. If they do engage somebody as an independent contractor and the relationship is challenged, the Courts can reclassify the engagement as an employment relationship. This reclassification can lead to substantial cost to the employer as they could then be liable for back dating any leave entitlements and other benefits.

I am engaged as an independent contractor, but I think I'm really working as an employee – what can I do?

Under the Employment Relations Act, you have the right to seek to be reclassified as an employee. The Employment Court and the Employment Relations Authority have the power to decide that someone engaged as a contractor is instead an employee.

The first step would be to discuss this with your practice. If you do not get a satisfactory response from them, you should consider applying to the Employment Relations Authority for reclassification. More information about the process can be found on their website at: <http://www.era.govt.nz>.

In determining “the real nature of the relationship” the Court or Authority will consider all relevant matters including the intention of the parties and the other tests listed in the previous question.

The practice I work for has disputed one of my invoices, and is not paying. What can I do?

If there is a clause in your contract that outlines how disputes should be handled, then this process should be followed in the first instance.

Other remedies are taking the practice to the disputes tribunal (if the amount is no more than \$15,000), or appointing a debt collection agency to recover the debt. These remedies would obviously be the last resort as it is unlikely the relationship could be salvaged after taking this approach.

My contract has been terminated by the practice before the termination date – what are my rights?

If there is a termination clause in your contract then this must be followed if the practice wants to terminate your contract. The practice has a right to terminate your agreement at anytime, if the contract allows for this to happen.

A contract is legally binding, so you can challenge the termination through the Courts if the practice has not followed the correct process. It would be advisable to get legal advice before doing this, as there are high costs involved in the court process.

June 2014

Need more help?

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