



BE A BOSS: MODULE 3

Deciding whether to hire an employee or contractor

The learning outcomes of this module are:

3.1 Recognise the basic features of a contractor and an employee

3.2 Be better equipped to decide whether the workers you want to hire should be employees or contractors

3.3 Know where to get help



Contents

Preliminary Questions	3
The 6 Indicators.....	4
Activity 1: Case Study (Matt and Irina).....	8
Activity 2: Case Study (Iman and Janine).....	9
Activity 3: Do you have contractors or employees?	11
Activity 4: End Reflection	13
Appendix 1: Additional website links and resources.....	14
Appendix 2: Our four top tips	16
Appendix 3: Answer to Activity 2 Case Study	17



Don't forget!
Make sure you save your work by downloading and saving this PDF to your own computer before you write in it.

Preliminary Questions

Part A: What is the first question you need to answer when hiring your own workers?

Part B: What legal obligations do you think the answer above impacts? Tick your response.

- a) Taxation
- b) Superannuation
- c) Other legal obligations (Workers' Compensation, Workplace Health and Safety)
- d) All of the above

Part C: Why do you think it's important to follow the law? Tick your response.

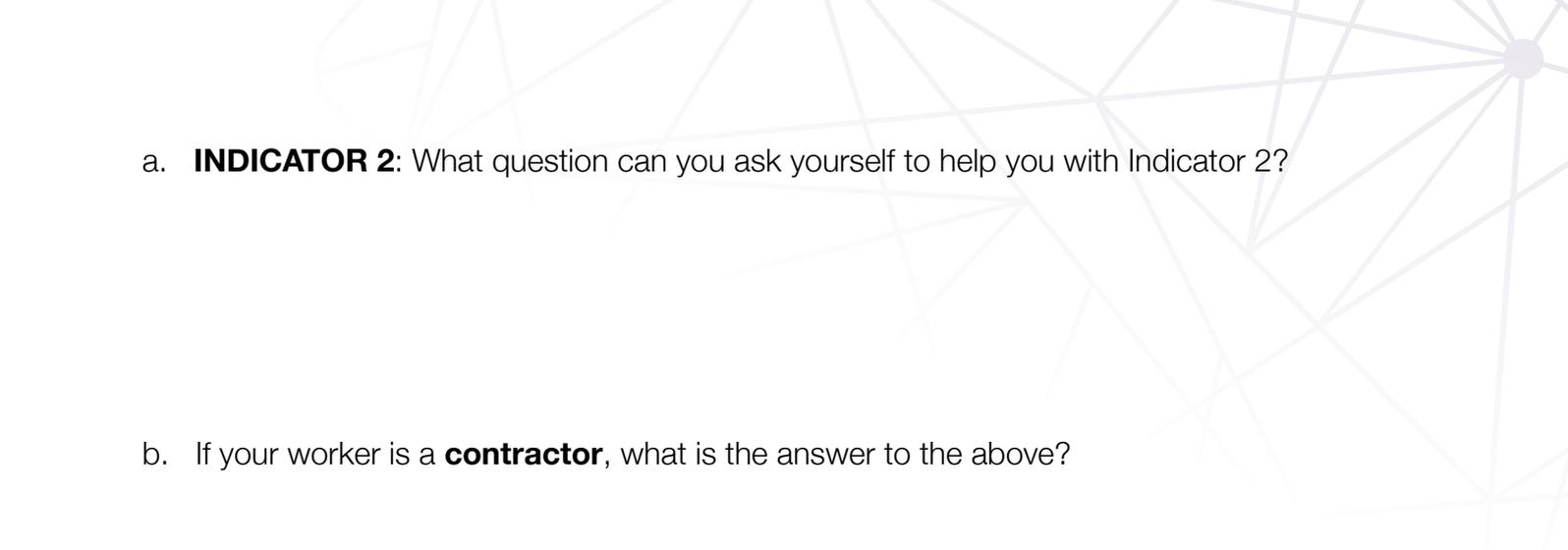
- a) Protect yourself as an employer
- b) Protect your worker
- c) Both a and b

Part D: What do you hope to gain from this module? Rank in order of priority from 1 (most important) to 3 (least important).

Learn more about the basic features of a contractor and an employee

Feel more confident around deciding whether the workers you want to hire should be employees or contractors

Know where to get help



a. **INDICATOR 2:** What question can you ask yourself to help you with Indicator 2?

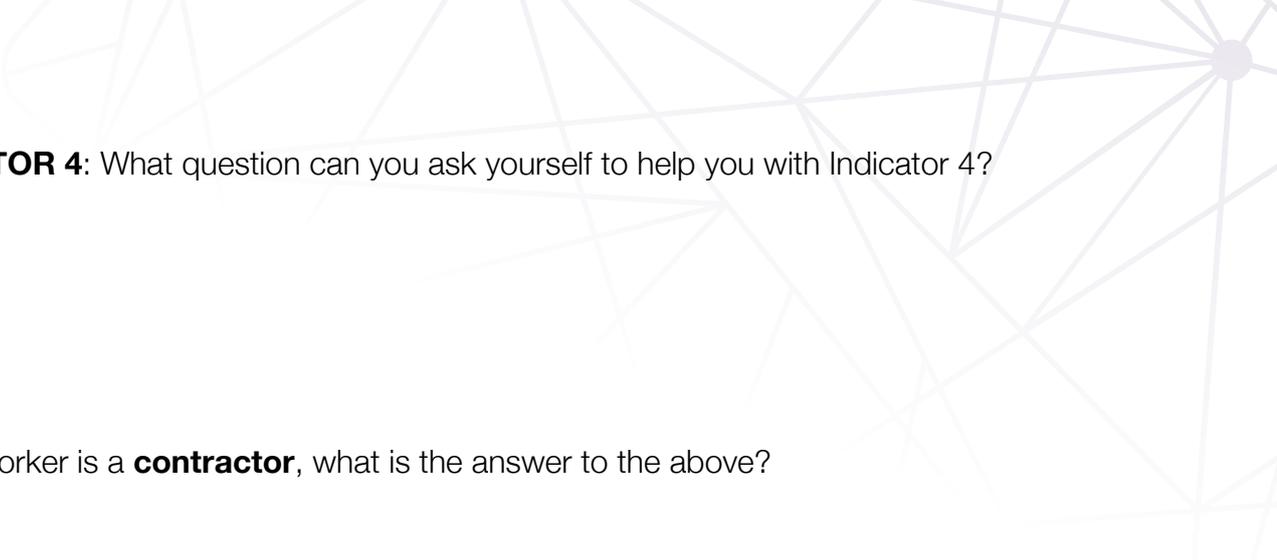
b. If your worker is a **contractor**, what is the answer to the above?

c. If your worker is an **employee**, what is the answer to the above?

a. **INDICATOR 3:** What question can you ask yourself to help you with Indicator 3?

b. If your worker is a **contractor**, what is the answer to the above?

c. If your worker is an **employee**, what is the answer to the above?



a. **INDICATOR 4:** What question can you ask yourself to help you with Indicator 4?

b. If your worker is a **contractor**, what is the answer to the above?

c. If your worker is an **employee**, what is the answer to the above?

a. **INDICATOR 5:** What question can you ask yourself to help you with Indicator 5?

b. If your worker is a **contractor**, what is the answer to the above?

c. If your worker is an **employee**, what is the answer to the above?

a. **INDICATOR 6:** What question can you ask yourself to help you with Indicator 6?

b. If your worker is a **contractor**, what is the answer to the above?

c. If your worker is an **employee**, what is the answer to the above?

Part C: Summary

Once you have completed Part B, you have the option to complete the table below with your responses:

Indicator	Contractor	Employer
1.		
2.		
3.		
4.		
5.		
6.		

Activity 1:

Case Study (Matt and Irina)

Scenario: Irina is Matt's support worker. Irina does regular support work in Matt's home every Monday to Wednesday from 9am to 4pm. Matt decided on these days and times.

Every Sunday night, Matt makes a schedule of the week's activities and gives it to Irina so she knows where they will be going that week. At the beginning of each week, Matt makes a list of tasks he needs done in his house and gives it to Irina, who does these tasks as requested.

Once when Irina was unable to do a day of support work, she asked Matt if her brother Nicholas – also a support worker - could fill in for her. Her proposed arrangement was that Matt would still pay Irina, and she would then pay Nicholas. Matt didn't know Nicholas and didn't feel comfortable with this arrangement, so he didn't agree.

When Irina started working for Matt, it was agreed that she would be paid as a sole trader via invoice using her ABN.

Part A: Do you think Irina is a contractor or employee? What are your reasons, and which indicators do they link with?

ANSWER: In this scenario, by weighing up the factors of the relationship between Irina and Matt above, even though it was agreed that Irina would invoice and use her ABN number, it is likely that they have an employer-employee relationship.

Activity 2: Case Study (Iman and Janine)

Scenario: Janine is Iman's worker. Iman engaged Janine by using online platform 'www.personalcaring.com'. On this site, individual support workers advertise the services they can offer people with disabilities.

Janine assists Iman with many personal tasks. This includes showering, toileting and dressing. Janine also helps Iman with weekly gardening tasks, light housework and cooking.

Janine works with Iman at his house twice a week, on days and times determined ahead of time by Iman.

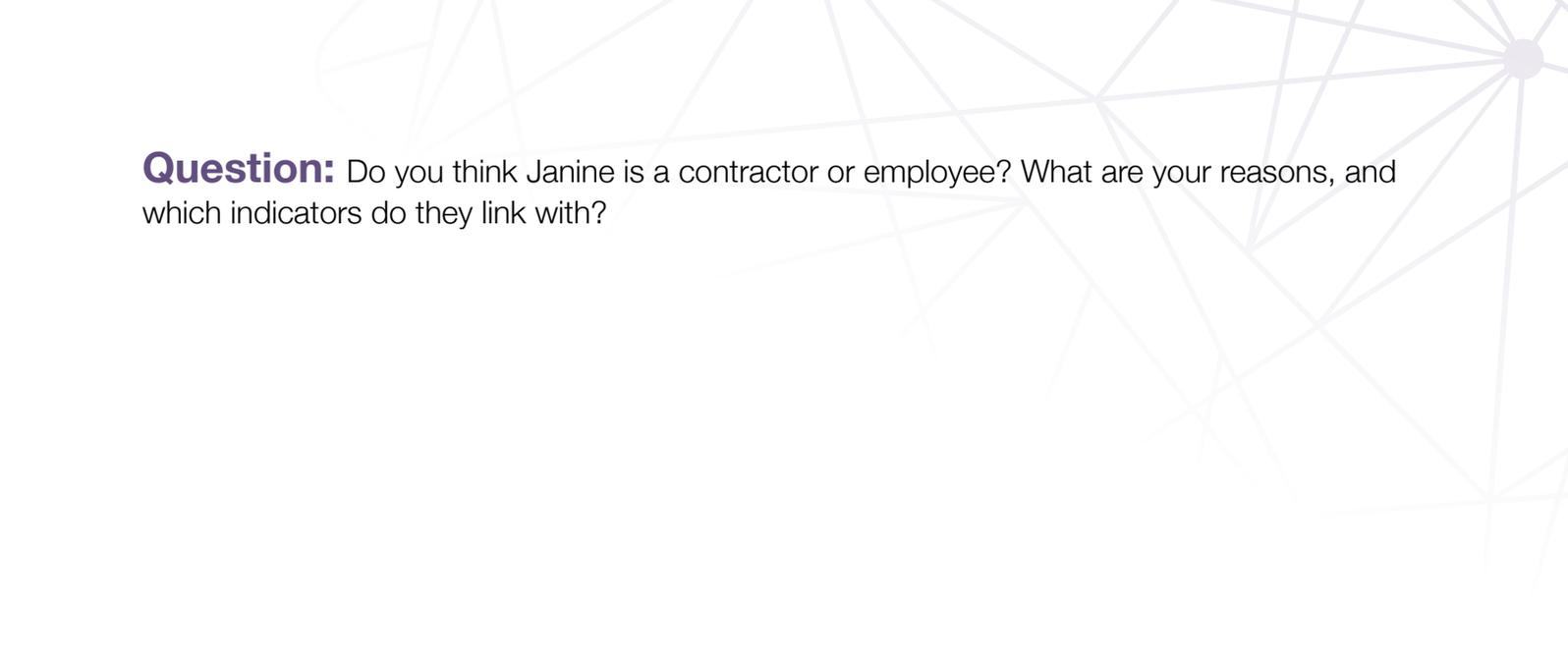
When Janine works with Iman, she uses some of her own equipment. Janine uses her own cleaning products because she is allergic to many chemicals. Mostly though, she uses Iman's tools to do her work – like cooking and gardening tasks.

Janine has an ABN and has many clients throughout Perth who use her personal care services. Janine drives to Iman's house for work each week in her own car that has her business sign on it.

Sometimes Janine can't make the time she has booked to work for Iman. When this happens, Sally (another personal carer who helps Janine out from time to time) takes Janine's place and works with Iman instead. When this happens, Iman still pays Janine, who then pays Sally.

Before she started working for Iman, Janine gave her the price she thought it would cost Iman for Janine's monthly personal care services. Now after the end of each month, Janine provides an invoice to Iman for the personal care services. On the invoice, Janine lists each day that she worked for Iman, and how many hours of work she did that day.

Janine tells Iman that her business expenses (like car insurance, gas, and cleaning products) are all included in the fees she charges.



Question: Do you think Janine is a contractor or employee? What are your reasons, and which indicators do they link with?

Activity 3: Do you have contractors or employees?

Part A: If you already have workers

If you have more than one worker, you may find you have a mixture of employees and contractors. You may even have different types of employees, like casual or part-time.

If you already have workers - write their names down. Then, with each worker, think through the 6 indicators. You can refer to Activity 2, Part B if you need help with this.

Then write down whether you think each worker is a contractor or employee. For more help with this exercise, you can use the [ATO decision tool](#).

Worker name	6 indicators	Employee or contractor?
Example: Joe Bloggs	1. Who controls the work?	a) If worker: contractor b) If you: employee
	2. Is the worker part of your business, or running their own?	a) If running their own: contractor b) If part of yours: employee
	3. What is the basis of payment?	a) If once work complete: contractor b) If for the time worked: employee
	4. Can your worker subcontract or delegate?	a) If no: employee b) If yes: contractor
	5. Who provides equipment, tools and other assets?	a) If you: employee b) If them: contractor
	6. Who pays to fix worker mistakes?	a) If you: employee b) If them: contractor
	7. OVERALL: Employee, or contractor?	

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Part B - If you are just starting out

What do you think might be the best choice for your situation – having an employee or contractor?

Some questions that might help you think about this are: how do you want to work with your worker? What do you need from this relationship? You can consider these questions in terms of the indicators - *For example: how much (or little) control do you want over how your worker works? (Indicator 1).*

Activity 4: End Reflection

Actions you need to take to determine whether your worker is an employee or contractor |
When you can complete these actions by | Whether you need help with these actions, and if
so, who you could ask:

Appendix 1:

Additional website links and resources

1. [ATO: Employer/contractor decision tool](#)
2. [ATO: Difference between employees and contractors \(6 indicators\)](#)
3. [ATO \(YouTube\): Employee or contractor? Avoid the myths](#)

The Six Indicators

Situation	Contractor	Employee
Control over the work: who tells worker how to do the work?	Worker can do the work in any way they like so long as the work is completed to an agreed standard, or to the specific terms in their contract or agreement.	Worker follows any reasonable work requests from their supervisor or the business they work for.
Independence: Worker seen to be a part of the business, or separate?	Worker independently operates their own business. Worker completes the tasks or services as agreed to in their contract or agreement, and are free to accept or refuse extra work.	Worker is seen to be part of the employer's business, and is not independent from it.
Basis of payment: how does the person who pays the worker figure out how much to pay?	Worker is paid all or the majority of their quote once they finish the work to an agreed standard. Worker generally supplies an invoice to the other business before getting paid.	Worker paid: <ul style="list-style-type: none"> • for time (normally hours or shifts) worked, or • a price for each item or activity done, or • commission
Ability to subcontract or delegate - who does the work?	Worker free to pay someone else to do the work instead of the worker.	Worker can't pay someone else to do the work.
Equipment, tools and other assets - what worker needs to do their work?	Worker brings to the job all or most of the things they need to do their work. Worker has to buy or hire their tools of trade or any equipment needed to do the work.	The business worked for provides worker with all or most of the things the worker needs to do their work. or Worker provides all or most of the things needed to do their work but the business they work for gives them an allowance or pays them back for the cost of the things bought.
Commercial risks - if worker makes a mistake, who pays to have it fixed?	Worker responsible for fixing their own mistakes at their own expense.	The business the worker works for is responsible if the worker makes a mistake. The business pays for the cost of fixing it.

Appendix 2: Our four top tips

1. If you are unsure whether you have an employee or contractor, please use the ATO's Employee Contractor decision tool as a guide. Keep a copy for your records, as the ATO says they will take that report into account if they check.
2. If you are still unsure whether your worker is an employee or a contractor, you can get your own independent legal advice.
3. A sham contracting arrangement is when an employer attempts to disguise an employment relationship as an independent contracting arrangement. Sham contracting relationships are illegal. Please be aware of this.
4. You can also contact us for help. Although we cannot provide legal advice, we can support you with further information and guidance. Email: admin@waindividualisedservices.org.au

Appendix 3:

Answer to Activity 2 Case Study

The significant factors in this case study are:

1. The amount of control the person paying the worker has over the hours of work, what the worker does, and the amount of work done. (More control leans towards an employment relationship).

Iman, in consultation with Janine, determines her own timetable. She also determines when and where Janine does the work. This means the relationship is leaning towards one of employment.

2. Ability to delegate or subcontract, meaning whether the contract requires the worker to personally do the work, or if the worker has more ability to delegate. (If the worker has more ability to delegate, this leans towards a contractor relationship.)

If Janine can't make a session with Iman, she can delegate the work to Sally, who Janine pays as a subcontractor. This means the relationship is leaning towards one of contracting.

3. Whether payment takes the form of wages or piece rate. (If payment is piece rate, then it is more likely to be a contractor relationship.)

Iman pays Janine per session. She does not pay her by the hour. This means the relationship is leaning towards one of contracting.

4. Whether the person paying the worker has a right to the exclusive service. (If not, this leans towards a contractor relationship).

Janine has many clients in Perth, and so Iman does not have Janine's exclusive service. This means the relationship is leaning towards one of contracting.

Less significant (but still important) factors are:

1. Use of the payer's tools. (If this is the case, then it's more likely that the worker is an employee).

Janine does the work in Iman's home. While she uses some of her own equipment, she mostly uses Iman's tools. This means the relationship is leaning towards one of employment.

2. The worker is doing work involving a profession, trade or a distinct calling on the part of the person paying for the work. (If so, this indicates a contractor relationship).

Janine is working in a distinct role for herself as a sole trader, and is not part of a clinic, office or business in which Iman is the employer. This means the relationship is leaning towards one of contracting.

3. The worker is paying their own business expenses. (If yes, this indicates a contractor relationship).

Janine uses her own car for business and pays all the expenses for the car, including car insurance and petrol. She also pays for her own advertising. This means the relationship is leaning towards one of contracting.

4. The worker's remuneration is paid without deducting income tax. (If yes, this indicates a contractor relationship).

Iman pays Janine by invoice and does not deduct income tax from the amounts she pays Janine.

Conclusion:

By weighing up the factors of Janine and Iman's relationship, we can see that they likely have a contractor-contractee relationship for the purposes of tax, superannuation, employment and work, health and safety law.