

THE WORKERS COMPENSATION ACT 1951 (ACT)

Who is an ACT Worker?

GIO Workers Compensation engaged Moray & Agnew Lawyers so that we could provide you with the following definition of who will be considered a Worker in ACT.

1. Is there a contract?

A **Worker** is a party to a **Contract** with an employer/principal.

- A contract is an agreement. The contract does not have to be written.
- The contract must involve **Payment** for labour/services. If someone else is paying the person, they are not a worker.
- Pursuant to section 13, there may be liability to meet workers compensation entitlements for non-workers, if contracting with an employing entity or principal that does not have insurance. As such, **check certificates of currency** for all subcontracting entities. Note that subcontractors who are sole traders or partnerships cannot take out workers compensation insurance, and may be taken to be a worker.

2. Is it a contract of service?

A **Contract of service** is an employment contract, where a majority of the following factors are usually present:

- Payment direct to the worker.
- Taxation is deducted and remitted to the ATO.
- Superannuation contributions are made on behalf of the worker.
- The worker provides labour largely at the direction and control of the employer.
- The employer provides primary materials and most tools and equipment required to perform the job (although some tools may be owned by the worker).

Note that not all of the above factors need to be present, for a contract of service to exist.

If Yes - and the contract is a contract of service, you have a Worker:

Section 8(1)(a): worker means an individual who works under a contract of service, whether the contract is express or implied, oral or written.

3. If no – is it a contract for services?

If the contract is not a contract of service - but it is for the provision of labour/services - it is likely to be a **Contract for services**. We often call these providers of labour “**contractors**”. In some circumstances, they will be taken to be a **Worker**.

Contracts for services are often characterised by:

- Payment being made inclusive of GST pursuant to invoice quoting ABN.
- The individual's provision of skill, expertise, or their own tools and sometimes materials, in addition to labour.
- The individual working their own hours / days.
- The individual also working for other employers / principals.
- Payment being made to a business name, such as “Jack and Jim’s Plumbing”.

When is a Contractor taken to be a Worker?

- If the contractor works for labour only, or substantially labour only, even if paid at piecework rates - section 8(1)(b).

In addition, section 11 provides that the following contractors are taken to be WORKERS, and entitled to workers compensation:

- Contractors engaged on a **Regular and Systematic** basis.
- Contractors with a reasonable expectation of an engagement continuing on a **Regular and Systematic** basis.

What is a Regular and Systematic basis? What is a Regular and Systematic basis?

- Retained more than once, or likely to be retained again, when suitable work available.
- Does not have to be subject to a pattern (ie every second Thursday), as long as the services are often relied upon for the employer's / principal's business, or there is an expectation that they will be often relied upon, in the future.



4. Is ACT the Territory of connection for the worker?

A worker is an ACT Worker if:

- They only work in the ACT.
- They rarely work outside the ACT, such that the ACT is their “single usual place of employment”.
- They sometimes work outside the ACT, however, their base for employment is in the ACT.
- They sometimes work outside the ACT, however, they have no base for employment and the employer / principal is in the ACT.

A worker may not be an ACT Worker if:

- They sometimes work outside the ACT, and their base for employment is outside the ACT.
- They sometimes work outside the ACT, they have no base for employment and the employer / principal is outside the ACT.

Note:

Volunteers are not workers, unless they are trainees, religious workers, commercial volunteers or public interest voluntary workers as declared by the Minister.

Persons retained on a one-off or ad hoc basis to perform work that is not connected to a trade or business are not workers (such as occasional babysitter).

Persons retained on a **Regular and Systematic** and casual basis under a contract of service to perform work that is not connected to a trade or business (such as weekly domestic housecleaner) are **Workers**.

If work is performed: for a stated outcome; with provision of tools, equipment and materials; and the labourer has liability to rectify defects OR a personal services business determination is in effect for tax purposes - not a worker: Section 8(1)(c).

KNOW NOW



For further information, please do not hesitate to:

- Speak to us directly by phoning 13 10 10 or by
- Email us at wccclaimsact@gio.com.au