

GUIDE TO CONTRACTING LABOUR FOR SMALL BUSINESS



Australian Government

Fair Work
OMBUDSMAN



Australian Security Industry
Association Limited

Why use this guide?

As a small business owner you may need to engage contractors, or outsource work, from time to time. It could be contracting a cleaning company to keep the shop sparkling, paying an IT company to revamp your computer system or engaging a bookkeeping service to handle payroll.

It is important to be aware that there are variety of ways workers can be engaged by your business, for instance by outsourcing work to a contractor who in turn engages workers as employees (the focus of this guide) or independent contractors, or a combination of both. A business could also engage staff through a third party labour hire service provider. It's good business practice to understand how the workers in your business will be engaged so you can mitigate against the risk of noncompliance with workplace laws.

When you contract another business to provide you with labour, you should look for someone who complies with workplace laws. You can minimise your risk of hiring a non-compliant contractor by doing some simple checks before you engage them. Use the checklist below to help you.



Did you know you could be liable if your contractors break the law?

When contracting work to another business, the contractor you engage may hire new staff or have existing employees that carry out the services. Or, they might subcontract the work to another business.

It is important to be aware that as a business owner, there are circumstances in which you may also be found liable for any contravention of workplace laws your contractors or subcontractors might commit.

For example, if you contract a business that is found to have underpaid their staff while doing work for you, and you were knowingly involved in that conduct, it's possible that you could also be held liable for their contraventions.

Find out more about accessorial liability and what it means for individuals and businesses at www.fairwork.gov.au/about-us/news-media-releases/newsletter/august-2016/what-is-accessorial-liability.

Labour contracting checklist	Completed
<p>Ask potential contractors about their workplace practices</p> <p>When approaching potential contractors for a quote include some questions in your request to find out about their workplace practices. For example:</p> <ul style="list-style-type: none"> ▶ Will you be looking to subcontract any of my work? ▶ How many employees do you plan to use for my work? ▶ Do you pay your employees their correct wages, including penalty rates and casual loading? ▶ Do you keep employee records and provide pay slips? ▶ Have you ever been investigated by the Fair Work Ombudsman? What was the outcome? <p>Check that the quoted price is enough to cover wages</p> <p>After you get your quotes, check that the amount quoted is enough to cover the entitlements of any of the contractor's employees.</p> <p>You can do this by looking up the minimum pay rates in the industry to get an idea of what they should be getting. Use our Pay and Conditions Tool to help you: www.fairwork.gov.au/pact.</p> <p>Require ongoing workplace compliance</p> <p>When you have decided which contractor to engage, let them know that you expect them to comply with workplace laws. For example, you could include it as a term of your contract, or you could send them an email letting them know that as a condition of their engagement, they're required to:</p> <ul style="list-style-type: none"> ▶ comply with the <i>Fair Work Act 2009</i> and <i>Fair Work Regulations 2009</i> ▶ let you know if they're going to subcontract any of your work. 	<div data-bbox="1353 622 1390 656" data-label="Form"><input type="checkbox"/></div> <div data-bbox="1353 1055 1390 1088" data-label="Form"><input type="checkbox"/></div> <div data-bbox="1353 1384 1390 1417" data-label="Form"><input type="checkbox"/></div>



Case study – Labour contracting in action

Win Win recently bought a small but popular bakery. She decides to contract out the daily cleaning of her store so she can focus on growing her business.

Win Win receives some recommendations from her neighbouring businesses but before she selects a contractor, she uses the Fair Work Ombudsman's Pay and Conditions Tool (PACT) to get an understanding of what employees in the cleaning industry should be paid. She then asks the potential contractors to complete a questionnaire about their workplace practices and submit a quote.

At this point, Win Win is satisfied that she has enough information to make the right choice for her business. Win Win emails the contractor she chose to accept their quote. In her email she includes a requirement that the contractor is compliant with the *Fair Work Act 2009* and that she be told before any subcontracting happens.

Win Win is happy that she's got some extra cleaning help and that she's minimised any potential risks to her business.

Need further help?

For more detail and templates to help you use these steps, please read our **Guide to labour contracting** at www.fairwork.gov.au/supplychain.

For tailored advice and assistance, you can contact ASIAL on 1300 127 425 or visit www.asial.com.au.

Disclaimer: The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.