Identifying and Responding to Sham Contracting

Employment Rights Legal Service

What is sham contracting?

'Sham contracting' happens when a worker is wrongly treated as an independent contractor instead of an employee.

Employees are entitled to protections and entitlements that independent contractors are not. By 'misclassifying' someone as an independent contractor, employers try to avoid providing employees with their lawful minimum entitlements.

It is unlawful for employers to engage in sham contracting. Employers who engage in sham contracting may be required to pay compensation and significant fines.

Employee vs Independent Contractor

There is no one factor that determines whether someone is an employee or independent contractor. The entire relationship must be considered. **You can see these factors in the table on the next page.**

Employee vs Independent Contractor factors to consider

	Employee	Independent Contractor
Control	Your employer controls how you work	You control how you work
Hours of work	Your hours are set by your employer and	You set your own hours of work
Method of Work	You have an ongoing expectation of work (unless you are casual)	You are engaged to do specific tasks or projects
Method of Pay	You are paid a regular wage and receive payslips	You issue invoices for your work and are paid under an ABN
Leave	You get leave	You don't get leave
Taxation	Your employer contributes tax on your behalf	You pay your own tax
Tools of the trade	Your employer provides tools and uniforms	You provide your own tools and uniforms
Delegation	You cannot delegate your work to other people	You provide your own tools and uniforms
Risk	Your employer assumes financial risk associated with your work	You assume financial risk associated with your work
Good Will	You generate good will for your employer	You assume financial risk associated with your work

What should you do if think you're in a sham contracting arrangement?

Any or all the following options are available to you.

Raise the issue with your employer
Raise your concerns with your employer in writing, either by sending a letter or an email. If you have a discussion with your employer, you should take notes.

Sometimes breaches of the law occur when an employer is not aware of their legal obligations. Raising the issue with your employer can sometimes be sufficient to resolve it.

Make a complaint to the Australian Taxation Office
An employer who is engaging in sham contracting is probably not meeting their tax or superannuation obligations. Some independent contractors who are not being sham contracted may still be entitled to superannuation.

The Australian Taxation Office accepts complaints, including confidential complaints, about failures to pay superannuation and tax properly. More information about making a complaint can be found here.

Make a complaint to the Fair Work Ombudsman
The Fair Work Ombudsman can deal with complaints about sham contracting. The Fair Work Ombudsman's complaint form can be found here. The Fair Work Ombudsman can:

- investigate complaints;
- provide your employer with information about sham contracting and its obligations under the law;
- issue compliance notices; and
- take legal action against your employer.

Get legal advice about making a claim

Speak to a lawyer about your circumstances to get specific legal advice about your options. Depending on the facts of your case, you may be able to commence a General Protections (not involving dismissal) claim or an underpayment claim. Both claims have a 6-year limitation.

*This factsheet was last updated on **14 May 2026.** It was produced by the Employment Rights Legal Service. This factsheet provides general information about the law. It is not a substitute for legal advice.*