Contractor or Employee?

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Making a claim for compensation after suffering an accident at work is aprocess best conducted by an accredited injury lawyer.

Why?

Workers compensation cases often pit the interests of a sick or injured worker against the interests of the company that employed them and for this reason, the workers' compensation claim process can be adversarial and difficult, and often necessitates the use of a lawyer who is experienced with regard to workers' compensation claims.

Because we understand the claims process we can often get a higher compensation payout than what an individual could get without a lawyer, we also know the law and can obtain benefits for you that may not be on offer if you lodge the claim yourself.

Workers compensation is a complicated area and even more so if you work as a contractor, so to help understand how a worker or contractor is defined, we at GC Law have outlined all the information for you in the article below.

This article will also be available to download as a PDF if you wish to use it as a reference.

When is a contractor a “worker” under the Workers’ Compensation and Rehabilitation Act 2003 (**WCRA)**?

Employers will often ask their workers to sign an agreement acknowledging that they’re a contractor and not an employee in an effort to avoid the obligation to insure the worker against personal injury under the WCRA.

These types of agreements usually state that the worker will be responsible for payment of their own income tax, will not be eligible for compulsory employer superannuation payments and require the worker to take out their own private insurance for personal injury.

Each of these characteristics are consistent with a person being a contractor. However, that doesn’t necessarily mean the person is not a “worker” within the meaning of the WCRA and entitled to workers’ compensation benefits if they’re injured at work.

A contractor can be a “worker” under the WCRA regardless of their tax paying status. Even if the contractor works under an ABN and invoices the employer for work performed at an hourly rate, the contractor may still be a “worker”.

A “worker” can also include a contractor who works under a contract of service. If the employer sets the contractor’s hours, gives directions as to hours the work should be performed or the contractor works for a single employer, the contractor could also be a “worker” for the purposes of the WCRA.

Contractors engaged for labour only or substantially labour only may also be “workers”. This means that if the employer provides most of the tools, equipment and materials, the contractor could be a “worker” as defined.
Another relevant factor is whether the contractor is responsible for the cost of rectifying any defects in their work. If this responsibility rests with the employer, the contractor could be a “worker” as well.

These are only some examples of people who may be considered “workers” under the WCRA. Each case still needs to be considered on its own facts.

So, while a person may appear to be a contractor because of an agreement they’ve signed with the employer, they may nevertheless be a “worker” within that meaning under the WCRA and entitled to workers’ compensation if they’re injured at work. It also means that some employers who think they’ve circumvented the WCRA with these agreements will actually be uninsured...

Gavin Mills, Principal GC LAW

Remember, if you have a work related injury and you need assistance, contact GC Law immediately. You can use our Free Case Review process to start your claim; once we have assessed your case, we will contact you with a review and advise on the next steps.