

Employee vs Independent Contractor – knowing the difference



By Susan de Silva and Kavitha Rajan

Outsourcing is an emerging trend in the employment market today, with companies increasingly engaging the services of third parties to supply and manage certain categories of workers. Employed by the third party, these workers are usually assigned to work in the company as “independent contractors” and as such, do not contribute to the employee headcount of the company. Alternatively, companies have been engaging the services of these workers as independent contractors or “consultants” under a contract for services signed with the company directly.

It is important to draw a clear line between the independent contractors and the employees in a company. Employees are individuals who work under a contract of service (i.e. employment contract) with a company, performing work in return for a salary. An independent contractor, on the other hand, works for a company under a contract for services in exchange for an agreed fee, and his performance of work is usually not subject to the control of the company. Unless it is careful, a company might find itself owing an independent contractor the usual employment liabilities, if the contractor is subsequently held to be an employee of the company. Such liabilities can include:

- the payment of compensation and benefits granted by the company to its regular employees;
- the application of the employer’s statutory responsibilities such as employer contributions (CPF contributions) and filings (such as with tax and immigration authorities);
- unfair dismissal claims; and
- vicarious liability for any wrongful or negligent acts of the contractor whilst working for the company.

There is no single test in Singapore for determining whether an individual is an “employee” of a company. While a written agreement between the parties is a starting point, the conduct of the parties will also be relevant in determining the true relationship between them.

The courts will consider various factors to determine whether the individual is an employee or merely an independent contractor. However, the main test contemplates the company’s control over a worker: an individual who is subject to the control of the company with regard to the work he is required to do and the manner in which he performs, is more likely to be considered an employee of the company.

Besides the above test, there are various other factors that help to distinguish an employee from an independent contractor. For example:

- An individual who is employed as part of a business and whose work forms an integral part of the business is more likely to be deemed an employee, whilst an independent contractor is one whose work is usually only an accessory to the business.
- An employee usually receives a fixed salary on a periodical basis, whilst an independent contractor is generally paid according to the amount of work done.
- Independent contractors do not usually have an obligation to work for only one particular company at any one time, and are less likely to be subject to specific working hours.
- Regular employee benefits such as paid annual leave, paid sick leave, medical insurance, overtime and provident fund contributions are not made available to independent contractors.
- An independent contractor is also usually required to provide his own tools and equipment for the work carried out.

As a company may face liabilities towards an independent contractor where he has subsequently been held to be an “employee” of the company, it is vital that companies ensure that such contractors are not accorded the treatment or benefits which would deem them regular employees of the companies.

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