

PAYING SUPER FOR YOUR SUB-CONTRACTORS

AS AT FEBRUARY 2016



SHOULD YOU BE PAYING SUPER FOR YOUR SUB-CONTRACTORS?

As an employer, your super obligations for your sub-contractors can be a very grey area. If you work with sub-contractors they may be classified as employees for superannuation purposes and as such, you will have obligations under the Superannuation Guarantee legislation.

The usual definition of an employee is anyone who receives salary or wages in return for their labour or services. For Superannuation Guarantee purposes, employees may also include:

- A director of a business.
- An employer's family member who works in the business.
- A contractor/ABN worker.

EMPLOYERS NEED TO BE AWARE THAT THEY MAY HAVE SUPER OBLIGATIONS FOR THEIR CONTRACTORS.

HOW DO YOU KNOW IF YOU SHOULD BE PAYING SUPER FOR YOUR CONTRACT WORKERS?

You should take the following factors into consideration:

1. How does your sub-contractor trade?
 - Company/Partnership/Trust - No obligation to pay superannuation.
 - Sole Trader - You may be liable to pay super for them.
2. Who decides when and where they work?
3. Who supplies the materials for the job? (This does not include hand tools.)
4. Do they have the power to delegate work to another party?
5. How are they paid? Hourly/weekly rate or at the completion of the job?

If you have the control to delegate workloads and supply the major materials for the job (which does not include tools), you are likely to be considered the 'employer' in this contract relationship and, under Superannuation Guarantee rules, will be obliged to pay superannuation contributions for them.

REMEMBER:

- Having an ABN (Australian Business Number) does not automatically exclude a sub-contractor from being an 'employee' and therefore does not automatically release you from your superannuation obligations to that sub-contractor.
- A person working for an hourly rate (labour only hourly rate sub-contractor) is still an employee and not a sub-contractor for superannuation purposes.
- Every contract is different. BUSSQ is not an authority on the relationship/contracts you have with your employees/sub-contractors. We can give you some basic guidance, however you may need to contact the ATO.

See contact details overleaf

DID YOU KNOW?

An employer cannot 'contract out' of their Superannuation Guarantee obligations (i.e. they cannot agree to pay a higher rate of pay so the contractor can pay for their own super).

There's more over page →

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EMPLOYER
fact sheet

YOUR SUPER OBLIGATIONS TO SUB-CONTRACTORS

- Super must be paid to a complying super fund – chosen by the worker. It must not be paid directly to the worker, or to their bank account.
- The super requirements for a contractor are the same as any ordinary employee who is eligible for superannuation contributions to be paid on their behalf.
- Employers cannot 'contract out' of their Super Guarantee obligations. Super is the responsibility of the employer, even if a contractor 'promises' to pay their own contributions.

HOW DO I GET MORE INFORMATION?

You can refer to BUSSQ's fact sheet on Ordinary Time Earnings. Alternatively, if you would like more information about your superannuation obligations to sub-contractors or about super in general, you can contact one of our friendly customer service staff on **1800 MY BUSSQ (1800 692 872)**, or you can log onto the ATO website www.ato.gov.au or contact them on **13 10 20**.

To help you work out if you are required to pay your sub-contractors super, the ATO has an excellent tool available on its website called: **Building and construction industry - employers/contractor decision tool**.

To find the tool go to www.ato.gov.au, then follow these four steps.

STEP 1	On the ATO homepage, click on the 'Super' tab
STEP 2	Under 'Super for Employers', click on 'Working out if you have to pay super'
STEP 3	Click on 'Contractors'
STEP 4	Scroll down and click on 'Building and Construction industry - employee/contractor decision tool'

Alternatively, you can visit the ATO website and type 'contractor' in the search bar and click on the first link (Employee/contractor decision tool).

IMPORTANT INFORMATION: The advice supplied in this fact sheet is general advice only and does not take into account or consider your personal objectives, financial situation or needs. Before acting on this information, you should consider the appropriateness of the information to your individual needs or seek independent advice from a properly qualified professional. BUSSQ offers members straightforward advice in relation to their superannuation, at no extra cost to the member, and affordable complex advice on a basic fee for service basis. More information on fees can be found at bussq.com.au. The advice is provided by BUSSQ's in-house Financial Planners. Before acquisition of a BUSSQ product, a Product Disclosure Statement should be obtained. A copy of BUSSQ's Financial Services Guide and Product Disclosure Statements may be downloaded from bussq.com.au or you can request a copy by contacting BUSSQ on **1800 MY BUSSQ (1800 692 877)**. Licence and registration numbers: BUSS(Queensland) Pty Ltd ABN 15 065 081 281; AFS Licence 237860; BUSSQ ABN 85 571 332 201.

Information in this fact sheet is correct as at February 2016.

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