



NEGOTIATING INDEPENDENT CONTRACTS

the easy complete guide for employers

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NEGOTIATING AN INDEPENDENT CONTRACT

Prepare for the meeting. Plan out each step:

1. Invitation
2. Introduction
3. Reasons
4. Explanation of what each part of the contract means
5. Close the meeting

Invitation

Meet separately with each person who is to be an independent contractor. Invite them to a private room at convenient time. Tell them the meeting is to discuss the need for legal protection for them and your business, regarding their work. Do not send the contract out before the meeting.

Read the AdviceWise "Guide to Independent Contractors" before the meeting

Introduction

Explain that the purpose of the meeting is to agree an independent contractor contract to cover their work. This is required to clarify that they are an independent contractor and not an employee and prevent any misunderstandings later. Being an independent contractor means they are in business for themselves and contract with the business for the contractor to supply labour or other services to the business for a certain fee. and/or

The Contractor issue invoices to the company for the services provided.

Independent contractors must register themselves for GST and ACC and are solely responsible for their income tax and the ACC levy. For some specified contractors, the company must deduct withholding tax from payments (see attachment).

There may be some tax deductions that contractors can claim, and they should talk to an accountant about this.

Or, the contractor may ask the business to do all this paperwork for the contractor, for a fee.

Because independent contractors are not employees, they are not entitled to the paid holidays, public holidays, sick and other leave. Like all small business owners, they must make their own provision for holidays etc.

Reasons for an independent contractor

- Independent contractor status gives the contractor more control over their working lives and income earning potential.
- It means that the contractor can have more than one source of income
- There may be taxation benefits including deductions on business related expenses

Explanation of what each part of the contract means

Go through the contract section by section:

1. Term
The length of the contract or open ended
2. The Services
This outlines what each party does for the other

3. Progress and Control
Performance reviews to ensure the contract is being followed.
4. Charges
How charges are calculated and paid
5. Expenses
What expenses are allowable
6. Confidentiality
The contract is just between the two parties and is confidential. Also clarifies security rules and property ownership
7. General Conditions
Covers:
 - a. The parties to the contract cannot be replaced by other parties (although the contractor can have someone carry out the work for them)
 - b. This is the only agreement between the parties and any changes to it have to be in writing
 - c. This outlines responsibilities for tax and ACC
 - d. This refers to a disputes process
 - e. This means the contractor must abide by house rules
8. Courtesy
Obligation of the contractor to show customers due care
9. Termination
How the contract will end
10. Health and safety
Compliance

Close the meeting

The independent contractor does not need to sign at the meeting. They can take the contract away to discuss it with their advisers.

Set a time for the next meeting at which the agreement will be signed. Four days is a reasonable time. Make a copy of the agreement. Both parties sign the original and the copy. The company keeps the original, the contractor takes the copy.

File the agreement somewhere secure.

As an employer, you must deduct withholding tax from payments to certain workers, unless they provide you with a valid Certificate of exemption (IR 331). See the activities below covered by withholding tax.

You are **not** responsible for making deductions from withholding payments for:

- ACC earners' levy
- student loan repayments.

These deductions are the contractor's responsibility.

Extract from the Inland Revenue Department web site 28 May 2007 www.ird.govt.nz/payroll-employers/make-deductions/withholding-tax/emp-deductions-salaries-wt-activities.html

| If the activity is..... | the normal tax rate is... | the rate if no tax code is declared is... |
|--|---------------------------|---|
| Agricultural contracts for maintenance, development or other work on farming or agricultural land | 15c | 30c |
| Agricultural, horticultural or viticultural contracts by companies and other contractors, including supply of labour, for pruning and/or thinning of fruit trees or vines, and picking and/or packing of fruit or grapes | 15c | 30c |
| Apprentice jockeys or drivers | 15c | 30c |
| Cleaning office, business, institution or other premises (except residential) or cleaning or laundering plant, vehicles, furniture etc | 20c | 35c |
| Commissions to insurance agents and sub-agents, and salespeople | 20c | 35c |
| Company directors' fees | 33c | 48c |
| Contracts wholly or substantially for labour only in the building industry | 20c | 35c |
| Demonstrating goods or appliances | 25c | 40c |
| Entertainers (New Zealand resident only) such as lecturers, presenters, participants in sporting events, and radio, television, stage and film performers | 20c | 35c |
| Examiners (fees payable) | 33c | 48c |
| Forestry or bush work of all kinds, planting, sowing or gathering vegetables, or flax planting or cutting | 15c | 30c |
| Freelance contributions to newspapers, journals etc (articles, photographs, cartoons etc) or for radio, television or stage productions | 25c | 40c |
| Gardening, grass or hedge cutting, or weed or vermin destruction (for an office, business or institution) | 20c | 35c |
| Honoraria (including payments to mayors, chairmen and members of council, boards of trustees, boards, committees and official clubs or societies) | 33c | 48c |
| Modelling | 20c | 35c |
| Mail contracting, transport of school children, milk delivery or refuse removal | 15c | 30c |
| Jockeys' or drivers' riding or driving fees paid to New Zealand residents | 20c | 35c |

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| <u>Non-resident contractors:</u> | | |
| - work in respect of construction, installation, assembly and similar projects | 15c | 30c |
| - professional or technical services in respect of such projects | 15c | 30c |
| - hire of equipment or personnel (other than as employees) | 15c | 30c |
| <u>Non-resident entertainers and professional sports people</u> visiting New Zealand | 20c | n/a |
| Payments for: | | |
| - caretaking or acting as a watchman | 15c | 30c |
| - mail contracting | 15c | 30c |
| - milk delivery | 15c | 30c |
| - refuse removal, street or road cleaning | 15c | 30c |
| - transport of school children | 15c | 30c |
| Proceeds from sales of: | | |
| - eels (not retail sales) | 25c | 40c |
| - greenstone (not retail sales) | 25c | 40c |
| - sphagnum moss (not retail sales) | 25c | 40c |
| - whitebait (not retail sales) | 25c | 40c |
| - wild deer, pigs or goats or parts of these animals | 25c | 40c |
| Sharefishing (on contract for the supply of labour only) | 20c | 35c |
| Shearing or droving | 15c | 30c |
| Street or road cleaning | 15c | 30c |
| Television, video or film - on-set and off-set production processes (New Zealand residents only) | 20c | 35c |