

EMPLOYMENT LAW

SESSION 2 ANSWERS

EMPLOYEES, CONTRACTORS AND SHAM CONTRACTING

Please note: these materials are educational resources. They are not intended to constitute legal advice and should not be relied upon as such. Last reviewed April 2015.

ACTIVITY A: SHAM CONTRACTING

Watch the video and answer the questions.

- 1 Tim owns the business. The business card shows that Tim is the owner, and Tendai says he will put the tools and equipment in Tim's car.
- 2 He puts the painting tools on a shelf that is fixed to the building (this suggests the tools are not Tendai's). He also says he will put the gear in Tim's car.
- 3 \$13 per hour.
- 4 Tim decides what hours Tendai will work. He makes a roster.
- 5 Tim says: "Your choice Tendai. If you want to quit go right ahead".
- 6 An ABN is an 'Australian Business Number'. It identifies businesses that are registered in Australia. You need to apply to get an ABN.
- 7 A tax file number (TFN) is a number that the Australian Tax Office (ATO) gives to you for tax reasons. Everyone has a different TFN.
- 8 If Tendai is fired because he will not accept being made a contractor, he can contact the Footscray Community Legal Centre, another relevant Community Legal Centre or the Fair Work Ombudsman for advice. He may be able to make an unfair dismissal or general protections claim.
- 9 The Fair Work Ombudsman

ACTIVITY B

For discussion with participants.

ACTIVITY C

What's the important information? Complete these sentences. Use a word or words from below:

employees contractors fake employee contractor true false

1. Sham contracting means **fake/false** contracting.
2. Sham contracting happens when a boss says you are a **contractor** but under law you are really an **employee**.
3. **Employees** usually work under supervision and do not decide which hours to work.
4. **Contractors** are the boss of their own business.
5. If you have an ABN you must be a contractor. True or false? **False**
6. If you wear a uniform, this suggests you are an **employee**.
7. If you receive a payslip, it is more likely that you are an **employee**.

ACTIVITY D

Discussion: Why do you think that a boss would say that a worker is a contractor, when really they should be an employee?

For discussion with participants. Reasons may include:

- The boss wants to avoid paying employee entitlements. For example:
 - o Workers' compensation insurance (employees are covered by employer's insurance, independent contractors usually are not)

- Wages and conditions (independent contractor wages and entitlements are a matter for 'negotiation' – contractors are not entitled to the minimum wage, annual leave, sick leave etc.)
- The boss wants 'flexibility' in telling the worker when they can work
- The boss does not understand the law relating to the difference between a contractor and an employee
- The boss takes advantage of a worker who does not have English as their first language, and who does not know Australian employment law.

ACTIVITY E

Discussion: Do you know many workers who have an ABN? Do you think they are real contractors? Why/why not?

For discussion with participants.

ACTIVITY F

Watch the video again. Watch for the screen that tells you where to get help. Where are some places that you can get free legal help?

See video.