



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

<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