

Employee versus independent contractor

By Anneline Scriven, legal advisor, LWO Employers Organisation

Independent contractors are appointed to perform work or provide a specific service to another person or business. They are not employees of the employer as they perform the work under their own business and is regarded as a service provider. Furthermore, the independent contractor is not obligated to perform the work him- or herself and may make use of assistants or employees to assist or perform the work.

An employee, on the other hand, is defined in the *Basic Conditions of Employment Act, 1997 (Act 75 of 1997)* as any person, excluding an independent contractor, who works for another person or for the state and who receives, or is entitled to receive, any remuneration; and any other person who in any manner assists in carrying on or conducting the business of an employer.

Labour law governs the employment relationship, protecting the employee and not the independent contractor. Independent contractors need to approach the civil courts if there is a dispute regarding the contract/agreement, work done, payment, etc.

What does the law say?

The *Labour Relations Act, 1995 (Act 66 of 1995)* sets out that, until the contrary is proven, a person who works for or renders services to any other person is presumed, regardless of the form of the contract, to be an employee if any one or more of the following factors are present:


- The manner in which the person works is subject to the control or direction of another person.
- The person's hours of work are subject to the control or direction of another person.
- In the case of a person who works for an organisation, the person forms part of that organisation.
- The person has worked for that other person for an average of at least 40 hours per month over the last three months.
- The person is economically dependent on the other person for whom he or she works or renders services.
- The person is provided with tools of trade or work equipment by the other person.
- The person only works for or renders services to one person.

Earning threshold aligned

This is not applicable if the person earns in excess of the earning threshold (currently set at R254 317.67 per annum). If any one of the aforementioned factors are present, the employer has the duty to rebut the presumption and prove that the person is not an employee but rather an independent contractor.

If the work arrangement involves persons who earn amounts equal to or below the earning threshold, any of the contracting parties may approach the Commission for Conciliation, Mediation and Arbitration to make an advisory award on whether the person involved in the arrangement is an employee.

Have a contact in place

While the wording of the employment contract is important, the true nature of the relationship between the parties is even more so. Employers are urged to ensure the terms of employment contracts are correctly worded. Equally as important is having a written independent contractor's agreement in place with the service provider when using independent contractors. 

For more information, send an email to anneline@lwo.co.za or info@lwo.co.za, or visit www.lwo.co.za.



Laat jou arbeidsregskwessies in bekwame hande

- Suksesvolle arbeidsregsaadvies SEDERT 1990
- SPESIALISTE in arbeidsregswetgewing
- Praat met gekwalifiseerde REGSPRAKTISYNS

SLUIT NOU AAN

Leave your labour law matters to our efficient team

- Successful labour law advice SINCE 1990
- SPECIALISTS in labour law
- Speak to qualified LEGAL EXPERTS

JOIN NOW

Die LWO is 24/7 beskikbaar by 0861 101 828 

The LWO is available 24/7 on 0861 101 828

 info@lwo.co.za  www.lwo.co.za

Mondstuk van die Suid-Afrikaanse aartappelbedryf • Mouthpiece of the South African potato industry

CHIPS

VOL 38 NO 5 • SEPTEMBER / OCTOBER 2024

**SUCCESSFUL 2024 CONGRESS
PAVES THE WAY FOR 2025**

**COMPETITION COMMISSION ON
FRESH PRODUCE MARKETS**

**Potato waste:
Quantity, value, causes**

**Physiological disorders
in potato tubers**

**Potato cultivation
and climate change**