



Upcoming changes to state employment laws in WA

Determining an employment relationship

New laws in the State industrial relations system will help determine the meaning of ‘employee’ and ‘employer’ and safeguard against workers being artificially labelled as independent contractors.

These new provisions in the *Industrial Relations Act 1979* (IR Act) have been introduced by the *Industrial Relations Legislation Amendment Act 2024* and will commence on 31 January 2025.

This fact sheet outlines:

- background to the changes
- the new test for determining whether a worker is an employee or independent contractor.

Background

State laws setting out employment entitlements and protections generally only apply to workers who are employees.

An independent contractor is not an employee, but rather a worker running their own independent business. They are sometimes also referred to as “contractors” or “subcontractors”.

To determine whether a worker is an employee or independent contractor, courts historically looked at multiple factors and the reality of the working relationship between the parties. However, recent High Court decisions have instead focused on the way contracts describe a worker’s classification. This approach enables workers to be artificially labelled as contractors and potentially deprived of protections under employment laws.

The new test

The IR Act has been amended to provide a new objective test for determining whether an individual is an employee, or whether a person is an employer of an individual. The new objective test will also apply to the *Minimum Conditions of Employment Act 1993* and the *Long Service Leave Act 1958*.

The new test requires an employment relationship to be determined by assessing the real substance, practical reality and true nature of a relationship. In determining this, consideration must be given to the totality of the relationship, rather than strict contractual terms.

The new test restores the previous common law approach and will safeguard against workers being artificially labelled as independent contractors by the terms of a contract.

The new test will apply from 31 January 2025. Businesses should review their working arrangements to make sure they are classifying workers correctly.

Where a party to proceedings before the Western Australian Industrial Relations Commission or the Industrial Magistrates Court claims an individual who carries or carried out work is or was not an employee of the party, the onus will be on the party to prove that the individual is not or was not an employee of the party.

Placing the onus on the party making the claim that a worker is not an employee will help deter unmeritorious and unnecessary legal arguments about a worker's status. It is reasonable to assume a party who makes such a claim has evidence to substantiate it.

State employment laws are changing

This fact sheet is part of a suite of information on the changes to state employment laws that will commence on 31 January 2025. For details on the changes visit www.demirs.wa.gov.au/new-employment-laws.

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