

EMPLOYER SUPERANNUATION SUPPORT (FOR EMPLOYEES)

Employers are required to contribute to a complying superannuation fund for their employees.

Calculation of contributions

Contributions are calculated based around the ordinary times earnings (OTE) of the employee.

In the 2014/15 tax year, the rate of contribution is 9.50% of the employee's OTE.

Timing of superannuation payments

Contributions are required to be calculated for a three month period ending on the 30/9, 31/12, 31/3 & 30/6.

Payment is required by the 28th day of the month following the end of a quarter.

(So for the period ended 30/9 payment date is 28/10, period ended 31/12 – payment due 28/1, period ended 31/3 – payment due 28/4, period ended 30/6 – payment due 28/7).

Definition of Ordinary Times Earnings (OTE)

OTE is defined as an employee's ordinary hours of work, which are those set out under the relevant award and/or agreement that governs the employee's conditions of employment. If the employee's ordinary hours of work are not specified in a relevant award and/or agreement, they are the normal, regular, usual or customary hours worked by the employee. See the table below for the types of payments that do and do not attract superannuation contributions.

For which employees are you required to make superannuation contributions?

If your employee is a full-time, part-time or casual employee aged between 18 and 70 years old, you are required to make superannuation contributions on their behalf (known as the Superannuation Guarantee) for any month in which the employee is paid \$450 (gross) or more.

If the employee is under 18, they must be working more than 30 hours a week to be eligible to receive superannuation contributions under the Superannuation Guarantee.

If the employee is covered by an award or workplace agreement, you may be required to pay superannuation contributions on all of the earnings even if they are under 18, working part-time and earning less than \$450 per calendar month—some awards extend superannuation to a wider range of employees, or to all employees.

You need to read the award or agreement under which the employee is employed.

Employee's choice of superannuation fund

Employers are required to give the employee a choice as to which superannuation fund their contribution will go into. The employer provides the employee with a choice of superannuation form and both parties complete the relevant sections of the form.

The employer retains this form for their records (it doesn't get sent to ATO).

The employer will then send the super contributions to the employees requested superannuation fund.

If the employee does not return the form or does not elect to have the contributions paid to a fund of their choice then the employer must pay the contributions to a complying fund for the employee of the employer's choice.

Please read the attached employee choice instructions form.

How is payment made?

The OTE wage for the quarter is ascertained to apply the contribution rate to and this gives the employer the amount of contribution needed to be paid for the quarter.

When sending in a contribution it is essential that the full name and employee's member number of the fund is provided and that the individual contribution amount is identified for each employee.

If you employ 20 people or less you can use the ATO's Superannuation Clearing House website to organise superannuation payments for your employees. This website allows you to enter an employee's information including their superannuation fund details and payment amount for the period and make one payment to the ATO Super Clearing House.

The ATO will then distribute the funds between each employee's superannuation accounts according to the superannuation guarantee amounts applicable to each employee.

For more information go to www.ato.gov.au and search for Small Business Superannuation Clearing House.

Employers who do not make contributions on time?

Employers that do not contribute on time will be liable for the superannuation guarantee surcharge (SGS). This is effectively the payment of the superannuation to the ATO who will pass it on to the employee's superannuation fund. It includes an administration fee and interest on the amount of the contribution unpaid in the calculation.

***** The ATO will charge significant penalties and interest when a SGS is levied on an employer *****

Defining employees v independent contractors

Superannuation guarantee will also be required to be paid on behalf of your contractors where they are not independent.

There are a number of factors which may contribute to determining the difference between an employee and an independent contractor. However, it is important to note that no single indicator can determine if a person is a contractor or an employee.

The first indicator is the simple rule that - if less than 50% of the payment is being made for the physical effort and skill (labour) of the individual performing the services, then the person is a contractor.

If 50% or more of the payment is being made for labour there are some common indicators that will contribute to determining whether a person is an employee or independent contractor:

- **Degree of control over how work is performed:** an employee performs work, under the direction and control of their employer, on an ongoing basis, whereas an independent contractor has a high level of control in how and when the work is performed
- **Power to delegate:** the power to delegate or in fact subcontract (in the sense of the capacity to engage others to do the work) is a significant

factor in determining if a worker is an employee or independent contractor (the ability to delegate strengthens the argument that the arrangement is that of a contractor).

- **Hours of work:** an employee generally works standard or set hours (note: a casual employee's hours may vary from week to week)

An independent contractor decides what hours and when to work to complete the specific task.

- **Expectation of work:** an employee usually has an ongoing expectation of work (note: some employees may be engaged for a specific task or specific period)

An independent contractor is usually engaged for a specific task.

- **Risk:** an employee bears no financial risk (this is the responsibility of their employer).

An independent contractor bears the risk for making a profit or loss on each task. Usually bears responsibility and liability for poor work or injury sustained while performing the task. As such, contractors generally have their own insurance policy.

- **Tools and equipment:** for an employee tools and equipment are generally provided by the employer, or a tool allowance is provided. An independent contractor uses their own tools, equipment & vehicle (note: alternative arrangements may be made within a contract for services).

- **Method of payment:** an employee is paid regularly (for example, weekly / fortnightly / monthly)

An independent contractor should have an ABN and submits an invoice for work completed or is paid at the end of the contract or project.

Once the question of whether the person is an employee or independent contractor has been answered, that will determine how the following areas are dealt with.

- **Tax:** an employee has income tax deducted by their employer from each payment. An independent contractor pays their own tax and GST to the Australian Taxation Office and thus they are paid the gross amount.

- **Leave:** an employee is entitled to receive paid leave (for example, annual leave, personal / carers leave and long service leave) or receive a loading in lieu of leave entitlements in the case of casual employees. An independent contractor does not receive paid leave.

- **Superannuation:** an employee is entitled to have superannuation contributions paid into a nominated superannuation fund by their employer. An independent contractor pays their own superannuation.