Outworkers

A guide to deemed workers

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# This guide has been produced to help employers and/or workers who may be uncertain about coverage under the *Return to Work Act 2014* (the Act). For further information please call ReturnToWorkSA (RTWSA) on 13 18 55.

# Who is a worker?

The Act provides for the recovery and financial support of workers who suffer a work injury arising from their employment. The Act requires that an employer register with RTWSA and pay an insurance premium based on remuneration paid to workers in their employ (unless they are exempted – see the RTWSA website for information on the small employer registration exemption). Under the Act, ‘worker’ has a broader definition than ‘employee’.

Whether someone is determined to be a worker under the Act needs to be considered on a case-by-case basis, from the viewpoint of the ‘worker’-‘employer’ relationship, against the provisions of the Act and well-tested common law principles.

The definition of ‘contract of service’ under the Act includes a contract, arrangement or understanding under which 1 person (the worker) works for another (the principal) in certain types of work i.e. prescribed work or work of a prescribed class - and this includes otherwise independent contractors. In these circumstances the principal is taken to be the ‘employer’ of the ‘worker’.

# Important notes

Whether a worker is engaged to perform work on an ongoing basis or for a short period e.g. for as little as one hour on a given day, or on a casual basis, an obligation exists on the employer to include remuneration paid to any such worker(s) in the calculation of premium payable.

A principal should ensure that an otherwise independent contractor who employs a worker(s) is, at all times when performing work for the principal, registered as an employer with RTWSA. If a contractor (who employs a worker(s)) is not registered, then under section 4(4) of the Act the principal is taken to be the employer of workers employed by the contractor. It is therefore in the principal’s best interests to ensure that any contractors who also employ workers are registered with RTWSA by requesting them to produce a copy of a certificate of registration.

Section 4(4) of the Act – states:

*Where in a prescribed industry or in prescribed circumstances a person (the principal) contracts with another person (the contractor) for the performance by the contractor of work undertaken by the principal, the principal will, for the purposes of this Act, be taken to be the employer of workers employed by the contractor.*

Regulation 5(8) of the *Return to Work Regulations 2015* (the Regulations) states:

*For the purposes of section 4(4) of the Act, a prescribed circumstance is where a person (the principal) contracts with another person (the contractor) who is not registered as an employer under the Act.*

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# Outworkers

Regulation 5(9) states that “outworker” has the same meaning as in the *Fair Work Act 1994 (SA) –* refer to section 5 of that Act.

An outworker is engaged for the purposes of another person’s trade or business to work on, process, clean or pack articles or materials or carry out clerical work in or about a private residence or any place other than business or commercial premises. The majority of outworkers work from their own home. The definition of “outworker” also extends to a person engaged for the purposes of another person’s trade or business, to negotiate or arrange the work of outworkers, or distribute to, or collect work from, outworkers.

If a person performs work as an outworker and any aspect of that work is governed by an award or industrial agreement that is expressed to apply to outworkers (whether or not they are actually ‘paid’ under the award) that work is ‘prescribed work’ for the purposes of the definition of a contract of service and such worker is taken to be a’ worker’ for the purpose of the Act. These awards include most of the clothing industries including boots, shoes and hats.

If the work is not governed by an award, then the individual circumstances must be considered to ascertain if a contract of service exists. An employer must, if employing outworkers who are taken to be workers under the Act , register and pay premium on the full contract amount paid, less any expenses incurred by the worker that are reimbursed by the employer.

If an outworker employs others to perform part of the work then there is a requirement for the outworker to register and pay a premium for those workers. There is no need for the principal to pay premium for an outworker who employs, unless that person is not registered.

If an outworker who employs is not registered, the principal may be deemed the employer. It is therefore in the principal’s best interest to ensure that any outworkers that they contract with and also employ are registered and paying premium for their workers.

If further clarification is needed please contact ReturnToWorkSA on 13 18 55 for assistance to establish if a contract of service exists.

# Disclaimer

The information produced by ReturnToWorkSA in this publication is correct at the time of printing and is provided as general information only and not as legal advice. In utilising general information about workplace health and safety and work injury management, the specific issues relevant to your workplace should always be considered and advice obtained. This publication is not intended as a substitute for the requirements of the *Return to Work Act 2014* or the *Work Health and Safety Act 2012.*