



SEYCHELLES REVENUE COMMISSION

FACT SHEET - SUB-CONTRACTOR or EMPLOYEE?

This fact sheet is to be used as a guide or summary of the difference between a 'sub-contractor' and an 'employee'. For further information you should contact the Seychelles Revenue Commission.

SUB-CONTRACTOR OR EMPLOYEE?

People who work for businesses may be employees or sub-contractors. The legal rights and obligations which apply to employees are quite different to those for sub-contractors.

Whether a worker is an employee or a sub-contractor is determined by the nature of the arrangement, not by the label the employer gives the person. Employees cannot be made into sub-contractors simply by calling them such; they must fit within the legal definition of a sub-contractor.

The law treats each relationship quite differently and if employers get it wrong it can be very costly. If the Revenue Commission determines the sub-contractor to be an employee, the employers may face paying expensive back payments in social security contributions and surcharges.

What is the difference?

A sub-contracting arrangement is a business to business relationship, with the worker providing a service which usually includes providing labour, tools and expertise. Contractors undertake to produce a given product or service and are not under the direction and control of an employer in the execution of their work. Contractors can use their discretion and may delegate tasks to others.

In an employment arrangement workers provide labour and work under the control and direction of the employer. The employer determines who does the work as well as when, how and where it is done.

It is this element of control which is crucial to determining the nature of the arrangement. Workers who are primarily providing their labour and who are working under the direction and control of the employer will usually be employees.

Other factors to consider

Other factors which may distinguish an employee from a sub-contractor are:

- Employees usually work for only one employer. Sub-contractors are usually free to offer their services to anyone.
- Employees are an integral part of a business and usually work on an ongoing basis. Sub-contractors operate as their own business or on their own account.
- Employees are usually paid according to the relevant employment act, award or contract of employment. Sub-contractors usually provide quotes and agree on a rate for a specific job.

- Employees usually receive benefits in addition to wages, such as paid leave. Employees usually need to seek their employer's agreement to take leave. Sub-contractors can usually take leave when they want and do not receive payment whilst on leave.
- Employees usually work with the employer's plant, equipment and materials. Sub-contractors usually provide much of these themselves.

A point to note

It is important when assessing whether a worker is an employee or sub-contractor to consider all of the relevant factors which distinguish these employment arrangements.

Taxation arrangements, annual or sick leave, pay rate arrangements are only indicators of a particular type of arrangement. They do not independently determine whether a worker is an employee or sub-contractor. The element of control in the working arrangement is one of the most significant factors.

Quick checklist

1. Answer the questions by circling YES or NO.
2. If more than 2 of your answers fall within the shaded boxes, then it is likely that the worker is an employee.
3. Contact our advisory centre to get further advice.

QUESTION	ANSWER		QUESTION	ANSWER	
Does the worker have the right to delegate the work to others?	Yes	No	Does the worker render an invoice for the work performed?	Yes	No
Are the tasks performed at the discretion and control of the worker?	Yes	No	Can the worker be terminated at any time?	Yes	No
Does the worker supply his own material, tools and equipment?	Yes	No	Does the worker provide 100% labour?	Yes	No
Is the worker reimbursed for out of pocket expenses?	Yes	No	Is the work being performed integral to the employer's business?	Yes	No
Does the worker work for any other businesses?	Yes	No	Does the worker bear the cost of any sub-standard work?	Yes	No
Was the worker employed as an employee in the past?	Yes	No	Does the worker actively advertise his or her services?	Yes	No