

An employer is generally required to make superannuation contributions for their employees if the employees are:

- 18 years old or over, and are paid \$450 or more (before tax) in a calendar month, or
- under 18 years old, being paid \$450 or more (before tax) in a calendar month and work more than 30 hours in a week.

It does not make a difference to an employer's obligation whether the employees are employed on a full-time, part-time or casual basis, or if they are a temporary or permanent resident.

Employers currently need to contribute a minimum of 9.5% of each eligible employee's ordinary time earnings. Ordinary time earnings are what an employee earns for their ordinary hours of work, including over-award payments, commissions, shift loading, and certain bonuses and allowances. Payments for overtime hours are generally not ordinary time earnings.

### What about self-employed people?

Self-employed people are not employees of an employer and do not have to make super contributions for themselves, but they can choose to make superannuation contributions to their own superannuation account if they wish to do so.

### Who is an employee?

An employee is a person employed under an employment contract. An employee for the purposes of the superannuation contribution obligations also includes certain other categories of people who are not ordinarily considered employees but who are deemed to be employees for the purposes of an employer's obligation to make superannuation contributions.

### When is a contractor an employee?

Some contractors will be self-employed and will not be employees, and so no superannuation contributions are required to be made for them.

However, the superannuation legislation deems certain contractors to be employees. A contractor will be an employee if the contract is wholly or principally for the labour of the person.

Some contractors will also be regarded by the law as employees. It can be difficult to determine whether someone working under a contract is a self-employed contractor or an employee. The Australian Taxation Office has identified the following six factors which may indicate whether a person is an employee or a contractor:

Employee	Contractor
The worker cannot subcontract/delegate the work and cannot pay someone else to do the work.	The worker can subcontract/delegate the work and can pay someone else to do the work.
The worker is paid for time worked, price per item or activity, or on a commission.	The worker is paid for a result achieved based on the quote they provided. A quote can be calculated using hourly rates or price per item to work out the total cost of the work.
The worker does not provide the equipment, tools and other assets required to complete the work, or the worker provides most or all of the equipment, tools and other assets and the business pays the worker an allowance for this.	The worker provides all or most of the equipment, tools and other assets required to complete the work, and does not receive an allowance or reimbursement for the cost of this equipment, tools and other assets.
The worker takes no commercial risks. The employing business is legally responsible for the work done by the worker and liable for the cost of rectifying any defect in the work.	The worker takes commercial risks, with the worker being legally responsible for their work and liable for the cost of rectifying any defect in their work.
The employing business has the right to direct the way in which the worker does their work.	The worker has freedom in the way the work is done, subject to the specific terms in any contract or agreement.
The worker is not operating independently. They work within and are considered part of the employer's business.	The worker is operating independently of the employing business. The worker performs services as specified in their contract or agreement and is free to accept or refuse additional work.

## Contractors and the arts

Superannuation legislation has some special provisions that apply to people working in the arts. It deems the following people to be employees:

- persons paid to participate in the performance or presentation of any music, play, dance, entertainment, sport, display or promotional activity;
- persons paid to provide services in connection with the above activities; and
- persons paid to perform services in connection with the making of any film, tape or disc or of any television or radio broadcast.

The ATO has ruled that a painter, presenting their own work, does not 'perform or present' an exhibition. However, a visual artist engaged in the preparation of materials used in a performance or a presentation could count as an employee if, for example, they are preparing the sets for a theatrical performance. Alternatively, if a visual artist is recorded on film, tape or disk for broadcasting on television, they would be entitled to superannuation under Section 12(8)(c) for presenting a live performance of their artistic skill.

While it is currently not legislated that visual artists be paid superannuation on the artist fee they receive for the commissioning or loan of their work for exhibition, some galleries and arts organisations support the principle of industrial fairness by making super contributions for their artists.

Meanwhile, contracted art installers may be deemed to be employees under the identified factors in the table on the previous page of this guide, or if they are providing services in connection with live performances or presentations as defined above.

## Further information from the ATO

The ATO has provided helpful guides for employees and employers concerned about paying super at <https://www.ato.gov.au/Business/Super-for-employers/> and has created tools including the [employee / contractor decision tool](#) and [super eligibility decision tool](#).

You may want to read the information provided and consider the tools in working out whether superannuation contributions should be made for you by the person paying you for your work. You should also consider getting your own independent advice about your rights to superannuation.

## Potential consequences of treating an employee as a contractor

Some businesses may not be aware that some contractors are employees for superannuation purposes and the employer may be required to make superannuation contributions on their behalf.

An employer that fails to make minimum superannuation contributions may be liable to a superannuation guarantee charge and to penalties.

## Super Choice Form

You can download the Standard choice form [here](#).