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What's the difference between an employee and a contractor?

There is often thought to be a fine line between employees and contractors, and even the Courts seem to manage to get it confused sometimes. For example, the High Court has decided that bicycle couriers engaged by a courier company were employees, not contractors, even though for taxation purposes the Court of Appeal had previously found the other way around!

There are important differences in the legal relationships of employment and contracting, such as employers usually being legally liable for the negligent actions of their employees. So, for example, an employer will usually be liable for the damage when their employee has an accident in their car whilst using it for work purposes. Employers are not, however, liable for the negligent actions of contractors – so, in the same circumstances, the employer would not be responsible for the damage in the car accident if the vehicle was being driven by a contractor.

Employers also must have in place workers compensation insurance to cover employees, whilst they do not have to have the same insurance cover for contractors. Another significant difference is that unfair dismissal legislation applies to employees, but not contractors. Contractors, however, may have other remedies available to them where their contract with the principle is unfair. Differences such as these make it vital that the difference between a contractor and an employee is clearly understood.

Contractors often have their own equipment, but the High Court found that too much can be made of this. The Court found that contractors normally must really be running their own business independently of the employer. However, in circumstances where there is a substantial investment in capital by the worker, a different conclusion may be drawn, even if there is no true independence.

The differences are significant and very important. An unwary person can be caught with huge liabilities which they assumed they were immune from.