



Sham Contract Arrangements

Genuine employees should not be pressured into independent contracting relationships by their employers. Such situations are called sham arrangements.

Sham contracting arrangements are unlawful under the *Fair Work Act 2009*.

The Office of the Australian Building and Construction Commissioner (ABCC) is responsible for investigating sham contracting arrangements in the building and construction industry.

WHAT IS A SHAM ARRANGEMENT?

A sham arrangement is where an employer attempts to disguise an employment relationship as an independent contracting relationship. This situation may arise because an employer wants to avoid responsibility for paying legal entitlements due to employees, such as minimum rates of pay and leave entitlements.

WHAT ARE THE OFFENCES?

- **Misrepresentation of genuine employment:** A person misrepresents an employment relationship, or a proposed employment arrangement, to be an independent contracting arrangement.
- **Re-engagement:** An employer dismisses, or threatens to dismiss, an employee in order to engage that employee as an independent contractor to perform substantially the same work.
- **False and misleading statement:** An individual knowingly makes a false statement with the intention of persuading a person to enter into an independent contracting arrangement.

WHAT PENALTIES MAY BE IMPOSED FOR SHAM CONDUCT?

If an employer is found to have contravened one of the above provisions, the court may:

- grant an injunction to stop an employee from being dismissed
- order the reinstatement of a dismissed person
- order compensation
- impose a monetary penalty.

The maximum penalties are \$6600 for an individual and \$33,000 for a body corporate.

ONUS OF PROOF

Misrepresentation: In court proceedings the employer must prove that they did not misrepresent the relationship, rather than the employee having to prove that the employer did.

Re-engagement: The employer is presumed to have breached the provision unless they can show that the dismissal and subsequent re-engagement was for a purpose other than converting the employee's status to an independent contractor.

WHAT IS THE ROLE OF THE ABCC?

ABCC Inspectors can investigate suspected sham contract offences.

The ABCC, the person affected or a union can commence legal proceedings in respect of a sham contract arrangement.

FURTHER INFORMATION

The Office of the Australian Building and Construction Commissioner

- Hotline: 1800 003 338
- Website: www.abcc.gov.au

Department of Education, Employment and Workplace Relations

- Independent Contractors Hotline: 1300 667 850
- Website: www.workplace.gov.au

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



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