

LOCUMS - COMPULSORY SUPER CONTRIBUTIONS AND OTHER ISSUES

Many employers are under the impression that payments made to contractors, and this includes locums, fall outside the provisions governing the 9% Superannuation Guarantee (SG), workers compensation and payroll tax.

Unfortunately this view is incorrect, and it is an area that is currently receiving a lot of attention from the various Government agencies in their audit activities.

If you pay an individual under a contract that is wholly or principally for their labour, you must make the compulsory 9% SG contributions, **even if they quote an ABN or are GST registered**. The payments must also be included for workers compensation and where applicable for payroll tax purposes.

An individual contractor is likely to be considered engaged wholly or principally for their labour where:

- they are paid principally for their personal labour or skills
- they must perform the contract work personally and are not able to delegate
- they are subject to the direction of the business owner as to where, when and how work is performed
- they are paid for the hours worked or on a commission basis
- they are provided with all the necessary materials and equipment to perform the required tasks.

However, for SG purposes the individual is not a deemed employee if they have contracted through a company, trust or partnership and therefore no superannuation is payable. The situation is not so clear cut for workers compensation and payroll tax where a company, trust or partnership is involved.

The contractor provisions under the Payroll Tax Act apply even if the party to the contract is a company or personal service business. Payments may be exempt where the contractor provides their services to a principal for no more than a total of 90 days in a financial year (the days worked do not have to be consecutive).

For workers compensation purposes, the contractor is not a deemed worker if the work is undertaken as a company and that company has its own workers compensation policy that covers themselves and their workers. However, this only applies if the contractor actually engages employees themselves.

Where an individual locum has been engaged by the pharmacy, the contract is wholly or principally for their labour and therefore the employer will be liable to pay the 9% compulsory superannuation and must declare the payments for workers compensation purposes, and where applicable payroll tax.

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