Taxi drivers

A guide to deemed workers

# 

# This guide has been produced to help employers and/or workers who may be uncertain about coverage under the *Return to Work Act 2014* (the Act). For further information please call ReturnToWorkSA (RTWSA) on 13 18 55.

# Who is a worker?

The Act provides for the recovery and financial support of workers who suffer a work injury arising from their employment. The Act requires that an employer register with RTWSA and pay an insurance premium based on remuneration paid to workers in their employ (unless they are exempted – see the RTWSA website for information on the small employer registration exemption). Under the Act, ‘worker’ has a broader definition than ‘employee’.

Whether someone is a worker under the Act needs to be considered on a case-by-case basis, from the viewpoint of the ‘worker’-‘employer’ relationship, against the provisions of the Act and well-tested common law principles.

The definition of ‘contract of service’ under the Act includes a contract, arrangement or understanding under which 1 person (the worker) works for another (the principal) in certain types of work i.e. prescribed work or work of a prescribed class - and this includes otherwise independent contractors. In these circumstances the principal is taken to be the ‘employer’ of the ‘worker’.

# Important notes

Whether a worker is engaged to perform work on an ongoing basis or for a short period e.g. for as little as one hour on a given day, or on a casual basis, an obligation exists on the employer to include remuneration paid to any such worker(s) in the calculation of premium payable.

A principal should ensure that an otherwise independent contractor who employs a worker(s) is, at all times when performing work for the principal, registered as an employer with RTWSA. If a contractor (who employs a worker(s)) is not registered, then under section 4(4) of the Act the principal is taken to be the employer of the workers employed by the contractor. It is therefore in the principal’s best interests to ensure that any contractors who also employ workers are registered with RTWSA by requesting them to provide a copy of a certificate of registration.

Section 4(4) of the Act – states:

*Where in a prescribed industry or in prescribed circumstances a person (the* ***principal****) contracts with another person (****the contractor****) for the performance by the contractor of work undertaken by the principal, the principal will, for the purposes of this Act, be taken to be the employer of workers employed by the contractor.*

Regulation 5(8) of the *Return to Work Regulations 2015* (the Regulations)states:

*For the purposes of section 4(4) of the Act, a prescribed circumstance is where a person (the principal) contracts with another person (the contractor) who is not registered as an employer under the Act.*

# Taxi drivers

Regulation 5(1)(d) of the Regulations provides that a driver of a taxi-cab (or similar motor vehicle) used for the purpose of transporting members of the public, **will be taken to be a worker** if all of the following requirements are met:

* The work is performed by 1 person to the contract, arrangement or understanding (the worker) in the course of or for the purposes of the trade or business of the other person to contract, arrangement or understanding (the employer).
* The work is performed personally by the worker (whether or not the worker supplies tools, plant or equipment) e.g. driving a taxi for a licensed taxi operator.
* The worker does not employ any other person to carry out any part of the work.
* The value of materials supplied or expected to be supplied in 2024 does not exceed $155 (indexed).
* The worker does not hold or lease a license issued in relation to the vehicle.

A taxi driver who supplies fuel such as LPG, diesel or petrol would be considered to have supplied materials for the purpose of this regulation and therefore the $155 amount is relevant

There are two types of arrangements under which a driver can be employed:

1. **Share of takings**: Drivers employed under this arrangement do not generally supply materials although there are exceptions. Regardless of the requirement to supply materials, a taxi driver may be considered a worker under a contract of service.
2. **Bailment agreements:** A bailment agreement must be consistent in its terms with the formal agreement held by the Taxi Council SA Inc. A bailment agreement puts the taxi in the hands of the driver for the shift – they are not driving for the purposes of the trade or business of the taxi owner but themselves. A driver under a bailment agreement would generally not be considered to be a worker.

Where the driver is not engaged under a shift or bailment agreement (as described) the engagement is most likely to be regarded as a contract of service.

If further clarification is needed please contact ReturnToWorkSA on 13 18 55 for assistance to establish if a contract of service exists.

# Disclaimer

The information produced by ReturnToWorkSA in this publication is correct at the time of printing and is provided as general information only and not as legal advice. In utilising general information about workplace health and safety and work injury management, the specific issues relevant to your workplace should always be considered and advice obtained. This publication is not intended as a substitute for the requirements of the *Return to Work Act 2014* or the *Work Health and Safety Act 2012.*