



Update—March 2012

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Please note: copies of the Monthly Employer Updates are also available on the TasBuild webpage at www.tasbuild.com.au

Entitlement Statistics for February 2012:

- Total entitlements paid: **43**
- Total value of entitlements paid: **\$350,428.72**
- Average weekly rate paid for all entitlements: **\$1,109.10**
- Average weekly rates paid to specific trades:

Boilermaker:	\$876.88
Carpenter:	\$1,001.48
Concretor:	\$799.52
Electrician:	\$1,177.32
Fitter & Turner:	\$1,208.40
Glazier:	\$1,128.80
Labourer:	\$1,218.00
Painter:	\$771.59
Plant operator:	\$1,077.77
Plasterer:	\$1,000.00
Plumber:	\$1,115.02
Refrig Mech:	\$1,927.03

The weekly rates are an average of the rates actually paid by TasBuild to employees taking an entitlement during the subject month. The weekly rates paid have been calculated in accordance with the requirements of the Act and the Rules of the Fund. In general terms the rates represent the ordinary weekly amount payable to the employee and do not include site specific or other various compensatory allowances.

Subcontractor or an employee?

On the surface the above question seems simple enough until you consider all the various definitions contained in legislation.

The previous Howard Government undertook to remove business red tape and identified that this could be done by using a standard definition of employee. Their attempt to consolidate the some 345 definitions of employee used in various pieces of legislation, was a task they never completed.

The *Rules of the Construction Industry Long Service Fund (the Rules)* defines an employee as follows:

“means a person who is, or has been, employed in Relevant Employment and includes any person engaged whether:
(i) under a contract of service;
(ii) under a contract that is wholly or principally for the labour of the person;
(iii) under a contract, whether or not a contract of employment, by any labour hire agency or group training scheme.”

Item (ii) above provides that where an Employer employs another person to perform work in Relevant Employment and that other person is contracted to only provide their labour, then in those circumstances that person is an **EMPLOYEE** for the purposes of the Rules.

It should be noted that item (ii) only relates to the circumstances where the person employed is a sole trader. Where the contract is with a partnership or an incorporated organisation the contract is unlikely to meet the “labour of the person” (i.e. a single specific person) requirement, unless specified in the contract.

Where the Employer does contract with an individual, sole trader, for the provision of their labour, then the Employer will be required to register that employee and pay long service contributions into the Fund. The employee will then accrue service towards a long service entitlement whilst they are so employed.

In the above circumstances TasBuild reviews each relationship on the merits of the information provided and corroborated by both parties.

Where the information supplied is not corroborated then TasBuild will review all of the available information and make a decision based on the evidence provided by each party.

When considering the employment relationship TasBuild will consider the details of the contract entered into by the parties together with the actions and relationship of the parties.

The traditional “sub contractor versus employee tests” established at law and by the Australian Taxation Office are also applied in each circumstance as an aid to determine whether the subject person is an employee for the purposes of the Rules.

In general terms where an Employer would be required to make superannuation contributions in accordance with the *Superannuation Guarantee Administration Act* then it is likely that they would also be required to make contributions to TasBuild for long service.

In all cases where the evidence of the actual relationship is different from the purported details of the contract then TasBuild is likely to make their decision based on the actual relationship.

Contracts that are drafted or used to circumvent legislative provisions in the area of subcontracting will not be accepted where the relationship and actions of the parties do not strictly accord with the conditions of the contract.

It should be noted that contracts can take many forms. The two most common are verbal and written both have equal force and weight at law. Having said that, the actual conditions of a verbal contract are somewhat more difficult to establish and to provide evidence to support or rebut an argument.

Chris Atkins CEO

This information is of a general nature and does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Construction Industry (Long Service) Act applies to you.