

As a boss, you want to terminate someone; terminate his or her services? Before that, please read my

老板炒我鱿鱼, 是有什么法律规范?  
那你一定要读我的

**Contract of Services & Contract for Services**

**Contract of Services**  
**≠**  
**Contract for Services**

雇佣合同是什么，  
劳务合同又是什么



**Contract of  
Services**  
雇佣合同

**Contract for Services**  
劳务合同

Parties  
entered in  
Agreement  
签署合同者

Employer &  
Employee  
(ie. Agreement can  
be oral, writing,  
express or implied)

Independent contractor/  
sub-contractor  
(ie. Company A entered  
contract with a  
renovation company to  
obtain their services)

Statutory  
benefit  
法定的福利

Apply (ie. EPF,  
SOCSO and etc...)

Do not apply

Terms of  
Termination  
终止条款

Follow Employment  
Act 1955

Follow the terms and  
conditions in agreement



- It is important to know the difference between “contract of services” and a “contract for services” as it will determine an individual’s legal right.
- The individual only entitle to invoke the jurisdiction of the **Industrial Court** if he or she under a **contract of service**.
- **Else**, the individual can only fight for his/her right for **a breach of contract in a Civil Court**



**How to determine  
employment status?**

**如何更清楚去区分是  
不是雇佣/劳务合同**



**Notes:** There is none specific formula which can determine whether an individual falls into *contract of services or contract for services* category. Therefore, if there is any argument, the industrial court will examine all facts and circumstances not only limited to the methods which will be mentioned. All the methods are principals which are obtained from previous significant law cases.

- **Control Test** 老板对员工的控制程度

Level of control which exercised by employer over his employee. The more control that is being exercised over the individual by the employer, the more likely the worker is an employee of the company (Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor , 1996)



- Integration Test 对工作上的综合测试

Level of integration of the work being carried out under the contract to the whole business structure operation. An employee is a person who is integrated with others in the work place or business although the employer does not need to exercise a detailed control over what the employee does. (Stevenson, Jordan Harrison Ltd v MacDonald & Evans, 1952)





- **Independence Test** 独立性测试，员工能不能选择工作时间等

Level of independence the individual engaged to perform their task. If the individual receives details instruction on when, where and how to perform his or her task, the individual most likely an employee.



- **Economic Reality Test** 经济实状测试, 对工作的依赖程度而生存

Level of dependency of job for survival. As a matter of economic wise, does the individual subject to the hiring party or is in business for him/herself.



所以无论雇主要炒  
员工鱿鱼的时候记得  
得。。。查阅法定  
上和合同上的条规

**Read carefully the terms and conditions stated in Employment Act 1955 and agreement before termination of services**





**For more information regarding contract of & contract for services:**

<http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20265%20-%20Employment%20Act%201955.pdf>





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