

EMPLOYEE OR INDEPENDENT CONTRACTOR?

When you hire staff you must figure out if they would be classified as an employee or as a contractor in the eyes of different governing bodies. While hiring a contractor is often easier for the person doing the hiring, it is not a matter of choosing to hire staff as one or the other.

If you mistakenly hire staff as a contractor when the Canada Revenue Agency (CRA) deems them to be an employee – you will be responsible for all unpaid remittances, taxes, and fees that are owed. This could include both your portion as the employer, and the employees portion if they haven't been remitting their taxes on their own.

As a general rule, because caregiving is based upon the needs of the person being supported and not on the skills of the worker, most staff within the sector are viewed as employees.

To figure out whether your staff are employees or contractors you need to pay attention to the definitions and regulations set out by the CRA, Employment Standards, and WorkSafe BC. All of their definitions are similar, but each have slight differences.

From the Canada Revenue Agency:

It is important to determine whether a worker is an employee or a self-employed individual. Employment status directly affects a person's entitlement to employment insurance (EI) benefits under the [Employment Insurance Act](#). It can also have an impact on how a worker is treated under other legislation such as the [Canada Pension Plan](#) and the [Income Tax Act](#).

The facts of the working relationship as a whole decide the employment status.

In an employer-employee relationship, the payer is considered an employer and the worker an employee. Employers are responsible for deducting Canada Pension Plan (CPP) contributions, EI premiums, and income tax from remuneration or other amounts they pay to their employees. Employers must remit these deductions along with their share of CPP contributions and EI premiums, to the Canada Revenue Agency (CRA).

An employer who fails to deduct the required CPP contributions or EI premiums has to pay both the employer's share and the employee's share of any contributions and premiums owing, plus penalties and interest.

If a worker or payer is not sure of the worker's employment status, either can ask the CRA for a ruling. A ruling shows whether a worker is an employee or self-employed, and whether that worker's employment is pensionable or insurable.

To ask for a CPP/EI ruling, you can:

- log in to [My Business Account](#) if you are a payer and select "Request a CPP/EI Ruling"

- log in to [My Account](#) if you are a payer or a worker and select "Request a CPP/EI Ruling"
- ask your authorized representative to request a ruling for you. They can log in to [Represent a Client](#) and select "Request a CPP/EI Ruling"
- write a letter or print and complete [Form CPT1, Request for a CPP/EI Ruling – Employee or Self-Employed?](#) and mail it to your designated [tax services office](#)

For more information:

<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4110/employee-self-employed.html>

From Employment Standards BC:

The Employment Standards Act (the Act) applies to employees, regardless of whether they are employed on a part-time, full-time, temporary or permanent basis. The Act does not apply to independent contractors. A person who is an independent contractor is considered to be self-employed; that is, in business for him or herself.

Calling a person an independent contractor, even if the worker agrees, does not decide the issue. This is because the requirements of the Act are minimum requirements and any agreement that tries to waive the requirements of the Act is not valid.

In order to determine whether a worker is an employee or an independent contractor under the Act, it is important to consider the definitions of "employee", "employer" and "work". The Act defines these terms very broadly. They read in part as follows:

"employee" includes:

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee

"employer" includes:

- (a) a person who has or had control or direction of an employee, or
- (b) a person who is responsible, directly or indirectly, for the employment of an employee.

"work" means the labour or services an employee performs for an employer whether in the employee's residence or elsewhere.

It is also necessary to look at the purposes of the Act, which are to ensure that employees receive at least basic standards of compensation and conditions of employment, to promote fair treatment and open communication between employers and employees, to foster a

productive and efficient labour force and to assist employees to meet work and family obligations.

The Act is intended to protect as many workers as possible. When deciding if a worker is an employee or an independent contractor, one of the main questions to ask is “Whose business is it?”

The courts have developed some common law tests that may be useful, but they must be considered in a manner consistent with the definitions and purposes of the Act

Some of these tests include how much direction and control the worker is subject to, whether the worker operates their own business and has their own clients, whether the worker has a chance of profit or a risk of loss, whether the work they are doing is integral to the business and whether there is an ongoing relationship.

The longer a person works for another, the more closely the worker’s duties are connected to the purpose of the business, the more the person who pays the worker controls the materials and tools and directs the activities, the more likely it is that the relationship is one of employer/employee.

Common misconceptions

The following factors are not, on their own, enough to show that a worker is an independent contractor. There may be an employment relationship, even if the worker does some of the following:

- agrees to be an independent contractor;
- charges GST;
- works at more than one job;
- submits invoices instead of timecards;
- doesn’t have statutory deductions taken from earnings;
- works independently without much direct supervision;
- drives their own car;
- provides their own tools; or
- is paid by piece rate or commission.

For more information:

<https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/forms-resources/employee-or-independent-contractor>

From WorkSafe BC:

All employers are legally required to have WorkSafeBC coverage unless the employer is exempt. An employer is a person or firm that hires workers or unregistered subcontractors

and an employer can be a self-employed proprietor, partnership, corporation, society, or any other type of legal entity.

Whether or not you need coverage depends on the type of business you choose to operate and whether or not you hire and pay workers

If your business hires contractors, it is important to know that some contractors may be your workers. This means you would be responsible for them as their employer and you would be required to pay premiums for their WorkSafeBC coverage.

Contractors would be your workers if they do not operate as an independent business and are either not eligible for their own WorkSafeBC coverage or decline to purchase WorkSafeBC's optional coverage.

For more information:

<https://www.worksafebc.com/en/insurance/need-coverage/who-needs-coverage/contractors-subcontractors>