**Independent Contractors vs Employees[[1]](#endnote-1)**

Determining whether a worker (current or prospective) is an **independent contractor** or **employee** is critical. It is important to remember that there is no one, definitive test of whether a worker is an employee or an independent contractor. Such a determination requires consideration of a wide variety of factors and each situation requires an independent assessment.

**Determining whether a position should be classified correctly as an employee or as an independent contractor**

As outlined in the resource [RC4110 Employee or Self-employed?](http://www.cra-arc.gc.ca/E/pub/tg/rc4110/) the Canada Revenue Agency (CRA) looks at several elements as a (non-exhaustive) guide to determine whether the responses better reflect a contract of service (employee) or a contract for service (independent contractor) for tax purposes. The key is whether the worker is performing services as a person in business on his or her own account.

1. **Intention of the parties** – whether the parties intend the relationship to be one of employer – employee or independent contractor. In a contract with an independent contractor, CRA looks in the contract for evidence of whether:

Worker has an official GST/HST number and charges tax

Payer does not deduct for income tax, EI or CPP

Worker sets own hours and is not actively supervised

Worker works for several businesses

Worker submits an invoice for labour provided

Worker drives his or her own vehicle and provides own tools

Worker is paid by commission

It is important to note that the intention of the parties is not the only consideration taken into account to determine whether a worker is an employee or an independent contractor.

1. **Control** - the ability of the payer to exercise control over a worker concerning the manner in which the work is done. Independent contractors generally have the ability to subcontract work or hire assistants to complete the contracted deliverables.
2. **Integration** - whether the tasks performed by an individual form an integral part of the organization (employer-employee), as opposed to merely being an accessory to the organization (independent contractor).
3. **Ownership of tools** – generally independent contractors provide their own tools (cars, computers, etc.). If the organization provides a furnished office and a computer, it may point to an employment relationship.
4. **Opportunity for profit and risk of loss test** –employees generally don’t have an opportunity to earn profit (beyond their normal salary), nor do they risk a loss. If fewer clients come in, they generally still get a paycheque. Contractors on the other hand, have both the opportunity for profit, and the risk of loss. They have to pay for overhead expenses, and may not earn enough income to cover those expenses.

The following list of characteristics identifies some of the potential differences between an employee and an independent contractor. This list of characteristics is not exhaustive and depends on the context – not all factors may exist, and not all may be applicable in any given situation. ***If in doubt, it is strongly advised that you consult an HR expert or lawyer.***

| **Employee** | **Independent Contractor** |
| --- | --- |
| follows instructions about how to work | works without detailed directions on procedure |
| trained on how job should be done | uses own experience/expertise to do job |
| integral and interdependent part of the team | works largely independently |
| *individual* is hired, based on skills, talent and potential | hired to provide *service*, regardless of who actually does work. May engage subcontractor(s) or hire assistants |
| has indefinite or term employment status | often hired for a set time period only – ie. until the completion of a specific project |
| hours set by employer/supervisor | sets own hours without regular supervision |
| works for one employer at a time | may work for several businesses at a time |
| works according to a performance- and workplan | works any way desired to provide required service or product with deliverables outlined in contract. |
| participates in regular performance reviews based on performance plan | reports on deliverables as agreed upon in contract |
| compensated regularly, at specified time periods | submits invoices for hours or work completed and has an official GST/HST number and charges tax |
| has work-related expenses paid by employer | pays own expenses out of expected compensation |
| has tools and supplies provided by employer | provides own tools and supplies |
| does not work on profit/loss basis | generally works on profit/loss basis |
| cannot offer efforts to general public | markets services to anyone who wants them |
| can be fired at employer’s discretion (subject to employment agreement and *Employment Standards Act)* | contract can be terminated according to terms of contract |
| can end employment at any time | responsible for completing deliverables as agreed upon, or giving appropriate notice |

The following outlines some of the implications of incorrectly determining whether a worker is an employee or a contractor:

**Canada Revenue Agency:** Employers are legally obligated to deduct, contribute, and remit payroll deductions on behalf of their employees. Such deductions include income taxes, pension contributions, and insurance premiums. No such obligation exists for independent contractors because they are, by definition, employers themselves. Failure to properly identify an employee as an employee may lead to liability to pay income tax, CPP and EI contributions on behalf of the employee, in addition to significant penalties, interest and legal fees.

**Workplace Safety and Insurance:** An injured worker believed to be a contractor but deemed an employee by WorksafeBC will at minimum result in retroactive payment of unpaid premiums, interest and fines. Additional exposure may include increased future premiums, legal costs and impacts upon reputation.

**Overtime, Statutory Holiday Pay, Vacation Pay**: An employee who was improperly classified as an independent contractor may make a claim to the Employment Standards Branch for overtime pay, statutory holiday pay and vacation pay that the employee was not compensated for because he or she was paid as a contractor.

**Wrongful Dismissal:** A judicial or arbitral finding that a terminated contractor was, at law, an employee could result in the adverse conclusion that legislative standards were violated giving rise to claims for pay in lieu of notice of termination, as well as legal fees and fines. Furthermore, such judgments are invariably public affecting not only the reputation of the employer, but possibly triggering domino claims by employees retained under similar terms.

Given the above, it is critically important that Division boards and staff understand how the law distinguishes between the independent contractors and employees. *When in doubt, it is strongly advised that you consult your Physician Engagement Lead, an HR expert or lawyer.*

1. This section has been adapted from UBC’s Human Resources: HR for Administrators, *Independent Contractors vs. Employees* at <http://www.hr.ubc.ca/administrators/managing-staff/independent-contractors-vs-employees/>. [↑](#endnote-ref-1)