



Independent Contractor or Employee?

It's expensive to run a small business. One of the biggest expenses is labour. When hiring an employee, the business owner not only has to pay the person's wages, but also the many government-imposed benefits, such as contributions to the Canada Pension Plan, Employment Insurance, vacation pay, severance pay, and overtime pay. There is also the expense of the paperwork required to deduct and remit an employee's taxes and other source deductions.

In an effort to circumvent these costs and reduce paperwork, many businesses prefer to retain their workers as "independent contractors". By entering into this arrangement, the person working for the business is characterized as someone working more "outside" the business, and simply bills the business for his or her work. He or she looks after instalments for income taxes, contributions to the Canada Pension Plan, etc.

Our society has fought long and hard for the basic benefits employees enjoy today. The benefits are there to achieve what we consider to be an equitable and fair balance between what the employer is entitled to derive from the worker, and what the worker is entitled to derive from the employer. Government has enacted legislation and has established policies to make sure both parties honour this balance. Accordingly, a business owner cannot deny a worker who is really an employee his or her benefits as an employee by arbitrarily identifying the worker as an independent contractor.

There are objective criteria and indicators which determine whether a worker is an employee or an independent contractor. These criteria include:

- the degree of subordination of the worker to the owner
- who determines the amount of pay
- regularity of working schedule, and who determines this
- degree of direction and control over the nature of work to be done
- who has the final word regarding the final product or result
- whether the worker has contracts with other businesses
- who owns the tools of the trade
- who does the marketing and advertising
- who pays and directs those who help or assist the worker in completing the task

A business owner hiring workers cannot afford to have a cavalier attitude when classifying his or her workers as employees or independent contractors. There are serious legal consequences arising out of an incorrect classification. The owner could be faced with liability to pay past source deductions, substantial fines, cumulative penalties, etc. Every business owner must carefully consider the categorization of a worker, and pay the worker according to the proper classification, either as an employee or independent contractor.

A written contract is always helpful in determining and confirming the nature of the working relationship. Obtaining legal advice when entering into such a contract will help keep the business owner on the “right side of the law” when dealing with his or her labour force.

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