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Employee or Self-Employed?

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Canada Revenue Agency
750 Heron Road
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Interpretive articles

To view articles that will help you understand the requirements of the *Canada Pension Plan* and the *Employment Insurance Act*, visit www.cra.gc.ca/cppeexplained.

Court decisions

- *Sagaz Industries Canada Inc. v. 671122 Ontario Ltd.* 2001 SCC 59 (27820)
- *Royal Winnipeg Ballet v. Canada (M.N.R.)* [2006] F.C.J. no. 339 (A-443-04)
- *Wolf v. Canada* 2002 FCA 96 (A-563-00)
- *Standing v. Canada (M.N.R.)*, [1992] F.C.J. no. 890 (A-857-90)
- *Wiebe Door Services Ltd. v. Canada (M.N.R.)* [1986] 3 F.C. 553 (A-531-85)
- *9041-6868 Québec Inc. v. Canada (M.N.R.)* [2005] A.C.F. no. 1720 (A-559-04)

Legislative references

- Paragraph 5(1)(a) of the *Employment Insurance Act*
- Paragraph 6(1)(a) of the *Canada Pension Plan*
- Sections 2085 to 2129 of the *Civil Code of Québec*

Legal material

ARCHAMBAULT, Pierre. "Contract of Employment: Why *Wiebe Door Services Ltd. Does Not Apply in Quebec and What Should Replace It.*" *The Harmonisation of Federal Legislation with Quebec Civil Law and Canadian Bijuralism: Second Collection of Studies in Tax Law.* Montreal. APFF. 2005.

What's new

This publication has been updated to include the process to use when determining a worker's employment status in the province of Quebec.

If you have a visual impairment, you can get our publications in braille, large print, or etext (CD or diskette), or on audio cassette or MP3. For details, visit our Web site at www.cra.gc.ca/alternate or call 1-800-959-2221.

La version française de cette publication est intitulée *Employé ou travailleur indépendant?*

Before you start

Who should use this guide?

Use this guide if you are a payer or a worker. It will help you understand how to determine a worker's employment status.

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. It can also have an impact on how a worker is treated under other legislations such as the *Canada Pension Plan*, the *Employment Insurance Act*, and the *Income Tax Act*.

The facts of the relationship as a whole will determine employment status.

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

An employer who fails to deduct the required CPP contributions and EI premiums must pay both the employer's share and the employee's share of any contributions and premiums owing, plus penalties and interest. For more information, see www.cra.gc.ca/payroll.

Note

Non-arm's length relationship – If an employee is not dealing at arm's length with the employer it is possible that their employment is not insurable under the *Employment Insurance Act*. For more information, read the interpretation article on this subject at www.cra.gc.ca/cppeexplained.

If the worker is a **self-employed individual** (business relationship), he or she is considered to have a business. For more information, see www.cra.gc.ca/business.

Requesting a ruling

If a worker or payer is not sure of the worker's employment status, either party can request a ruling to have the status determined. Use Form CPT1, *Request for a Ruling as to the Status of a Worker under the Canada Pension Plan and/or the Employment Insurance Act*. You can get this from our Web site at www.cra.gc.ca/forms or by calling 1-800-959-2221.

For information about rulings, see www.cra.gc.ca/cppe and click on "How CPP/EI Rulings work".

Note

This guide **does not replace** a formal request for a ruling.

Determining a worker's employment status

Certain factors must be considered when determining if a worker is an employee or a self-employed individual.

These factors differ if the contract is formed in the province of Quebec or in another province or territory. Usually, the province or territory where the contract was formed will determine which set of factors to use.

Note

In a written contract, the parties may state that in the event of a disagreement respecting the contents of the contract, it is to be interpreted under the Québec law (Civil Code), even though the contract was formed for example in Ontario (Common Law). Depending on where the contract is formed, unless it is stated differently in the written contract, use the set of factors appropriate for your situation.

Determine a worker's employment status in a province or territory (other than Quebec)

When we examine whether or not a person is an employee or self-employed individual, the key question we ask is whether or not the person is engaged to perform services as a person in business on his or her own account, or as an employee. To do this, we examine the total relationship between the worker and the payer, using a two-step approach.

Step 1

We ask the worker and the payer what their intent was when they entered into the working arrangement. Did the two parties intend to enter into a contract of service (employer-employee relationship) or did they intend to enter into a contract for services (business relationship)?

We need to know how they defined their working relationship and why they defined it as such.

Sometimes the intention is clear, and both parties are in agreement (common intent). Sometimes the intent can be found in a written agreement. Sometimes the two parties have a different understanding as to the status of their working relationship, in which case there is no common intent.

Workers and payers can set up their affairs as they see fit; however, they must ensure that the status they have chosen is reflected in the actual terms and conditions of the employment.

Step 2

We ask the worker and the payer questions that will help us understand the working relationship and allow us to verify whether the intent of the parties is reflected in the facts.

These questions relate to:

- the level of control the payer has over the worker;
- whether or not the worker provides the tools and equipment;
- whether the worker can subcontract the work or hire assistants;
- the degree of financial risk taken by the worker;
- the degree of responsibility for investment and management held by the worker;
- the worker's opportunity for profit; and
- any other relevant factors, such as written contracts.

We look at the answers separately and then together.

We consider whether or not they reflect the stated intention. When there is no common intent, we decide if the answers are more consistent with a **contract of service** or with a **contract for services**.

Factors you should consider

To help you understand the process, we explain each factor and show some indicators that the worker may be an employee or a self-employed individual.

Control

Control is the ability, authority, or right of a payer to exercise control over a worker concerning the manner in which the work is done and what work will be done.

Degree of control or autonomy

Consider the degree of control held by the payer or the degree of autonomy held by the worker.

The actual degree of control will vary with the type of work and the skills of the worker.

The determination of the degree of control can be difficult when examining the employment of professionals such as engineers, doctors, and IT consultants—because of their expertise and specialized training, they may require little or no specific direction in their daily activities. When examining the factor of control, it is necessary to focus on both the payer's control over the worker's daily activities, and the payer's influence over the worker.

Payer's right to exercise control

It is the right of the payer to exercise control that is relevant, **not** whether the payer actually exercises this right.

It is the control of a payer over a worker that is relevant, and **not** the control of a payer over the end result of a product or service that he or she has purchased.

Indicators that the worker is an employee

- The relationship is one of subordination. The payer will often direct, scrutinize, and effectively control many elements of how the work is performed.
- The payer controls the worker with respect to both the results of the work and the method used to do the work.

- The payer determines and controls the method and amount of pay. Salary negotiations may still take place in an employer-employee relationship.
- The worker requires permission to work for other payers while working for this payer.
- Where the schedule is irregular, priority on the worker's time is an indication of control over the worker.
- The payer determines what jobs the worker will do.
- The worker receives training or direction from the payer on how to do the work. The overall work environment between the worker and the payer is one of subordination.
- The payer chooses to listen to the worker's suggestions but has the final word.

Indicators that the worker is a self-employed individual

- A self-employed individual usually works independently within a defined framework.
- The worker does not have anyone overseeing them.
- The worker is usually free to work when and for whom he or she chooses and may provide his or her services to different payers at the same time.
- The worker can accept or refuse work from the payer.
- The working relationship between the payer and the worker does **not** present a degree of continuity, loyalty, security, subordination, or integration, all of which are generally associated with an employer-employee relationship.

Tools and equipment

Consider if the worker owns and provides tools and equipment to accomplish the work. Contractual control of, and responsibility for, an asset in a rental or lease situation is also considered under this factor.

What is relevant is the significance of the investment in the tools and equipment along with the cost of replacement, repair, and insurance. A worker who has made a significant investment is likely to retain a right over the use of these assets, diminishing the payer's control over how the work is performed. In addition, a significant investment in tools and equipment and the maintenance and replacement costs associated with these assets may place the worker at the risk of a loss.

Note

Tools and equipment can vary widely in terms of value and can include everything from wrenches and hammers, to costumes, appliances, stethoscopes, musical instruments, computers, and vehicles such as trucks and tractors.

Self-employed individuals often supply the tools and equipment required to complete a contract. As a result, the ownership of tools and equipment by a worker is more commonly associated with a business relationship.

However, employees can also be required to provide their own tools. The courts have acknowledged that a worker being required to provide his or her tools of the trade does

not, by itself, place that worker in the status of a self-employed individual. For example, many skilled trades people such as auto mechanics are required to supply their own tools, even if they are full-time employees.

Indicators that the worker is an employee

- The payer supplies most of the tools and equipment required by the worker. In addition, the payer is responsible for repair, maintenance, and insurance costs.
- The worker supplies the tools and equipment and the payer reimburses the worker for their use.
- The payer retains the right of use over the tools and equipment provided to the worker.

Indicators that the worker is a self-employed individual

- The worker provides the tools and equipment required for the work. In addition, the worker is responsible for the costs of repairs, insurance, and maintenance to the tools and equipment.
- The worker has significant investment in the tools and equipment and the worker retains the right over the use of these assets.
- The worker supplies his or her own workspace, is responsible for the costs to maintain it, and performs substantial work from that site.

Subcontracting work or hiring assistants

Consider if the worker can subcontract work or hire assistants. This factor can help determine a worker's business presence because subcontracting work or hiring assistants can affect their chance of profit and risk of loss.

Indicators that the worker is an employee

- The worker cannot hire helpers or assistants.
- The worker does not have the ability to hire and send replacements. The worker must perform the services personally.

Indicators that the worker is a self-employed individual

- The worker does not have to perform the services personally. He or she can hire another party to either complete the work or help complete the work, and pays the costs for doing so.
- The payer has no say in whom the worker hires.

Financial risk

Consider the degree of financial risk taken by the worker. Determine if there are any fixed ongoing costs incurred by the worker or any expenses that are not reimbursed.

Usually, employees will not have any financial risk as their expenses will be reimbursed, and they will not have fixed ongoing costs.

However, self-employed individuals can have financial risk and incur losses because they usually pay fixed monthly costs whether or not work is currently being performed.

Employees and self-employed individuals may be reimbursed for business or travel expenses. Consider only the expenses that are **not** reimbursed by the payer.

Indicators that the worker is an employee

- The worker is not usually responsible for any operating expenses.
- Generally, the working relationship between the worker and the payer is continuous.
- The worker is not financially liable if he or she does not fulfil the obligations of the contract.
- The payer determines and controls the method and amount of pay.

Indicators that the worker is a self-employed individual

- The worker hires helpers to assist in the work. The worker pays the hired helpers.
- The worker performs a substantial amount of work from their own workspace and incurs expenses relating to the operation of that workspace.
- The worker is hired for a specific job rather than an ongoing relationship.
- The worker is financially liable if he or she does not fulfill the obligations of the contract.
- The worker does not receive any protection or benefits from the payer.
- The worker advertises his or her services and actively markets himself or herself.

Responsibility for investment and management

Consider the degree of responsibility for investment and management held by the worker.

Is the worker required to make any investment in order to provide the services?

A significant investment is evidence that a business relationship may exist. You should also consider if the worker is free to make business decisions that affect his or her profit or loss.

Indicators that the worker is an employee

- The worker has no capital investment in the business.
- The worker does not have a business presence.

Indicators that the worker is a self-employed individual

- The worker has capital investment.
- The worker manages his or her staff.
- The worker hires and pays individuals to help perform the work.
- The worker has established a business presence.

Opportunity for profit

Consider whether the worker can realize a profit or incur a loss, as this indicates that a worker controls the business aspects of services rendered and that a business relationship likely exists. To have a chance of a profit and a risk of a loss, a worker must have potential proceeds and expenses, and one could exceed the other.

Employees normally do not have the chance of a profit and risk of a loss even though their remuneration can vary depending on the terms of their employment contracts. For example, employees working on a commission or piece-rate basis, or employees with a productivity bonus clause in their contract can increase their earnings based on their productivity. This increase in income is not normally viewed as a profit, as it is not the excess of proceeds over expenses.

Employees may have expenses directly related to their employment, such as automobile expenses, board and lodging costs. Normally, expenses would not place employees at risk of incurring a loss because it is unlikely that the expenses would be in excess of their remuneration.

Self-employed individuals normally have the chance of profit or risk of loss, because they have the ability to pursue and accept contracts as they see fit. They can negotiate the price (or unilaterally set their prices) for their services and have the right to offer those services to more than one payer. Self-employed individuals will normally incur expenses to carry out the terms and conditions of their contracts, and to manage those expenses to maximize net earnings. Self-employed individuals can increase their proceeds and/or decrease their expenses in an effort to increase profit.

This factor must be considered from the worker's perspective, not the payer's. It is for the most part an assessment of the degree to which the worker can control his or her proceeds and expenses.

Employees generally do not share in profits or suffer losses incurred by the business.

The method of payment may help to determine if the worker has the opportunity to make a profit or incur a loss. In an employer-employee relationship, the worker is normally guaranteed a return for the work done and is usually paid on an hourly, daily, weekly, or similar basis.

However, some self-employed individuals may be paid on an hourly basis. When a worker is paid a flat rate for the work performed, it generally indicates a business relationship, especially if the worker incurs expenses in performing the services.

Indicators that the worker is an employee

- The worker is not normally in a position to realize a business profit or loss.
- The worker is entitled to benefit plans which are normally only offered to employees. These include registered pension plans, and group accident, health, and dental insurance plans.

Indicators that the worker is a self-employed individual

- The worker can hire a substitute and the worker pays the substitute.
- The worker is compensated by a flat fee and incurs expenses in performing the services.

Determining a worker's employment status in the province of Quebec

When we examine whether or not a person is an employee or self-employed individual, we examine the relationship between the worker and the payer, using a three-step approach.

Step 1

We ask the worker and the payer what their intent was when they entered into the working arrangement. We need to know how they defined their working relationship and why they defined it as such.

Sometimes the intention is clear, and both parties are in agreement (common intent). Sometimes the intent can be found in a written agreement. Sometimes the two parties have a different understanding as to the status of their employment relationship, in which case there is no common intent.

Workers and payers can set up their affairs as they see fit; however, they must ensure that the status they have chosen is reflected in the actual terms and conditions of the employment.

To determine the parties' intentions, we obtain a copy of the contract, or a testimony by the parties and examine the parties' actions. Both parties' intentions form part of the context that we analyse.

Step 2

We look to see if the employment meets the definition in the *Civil Code of Québec* of a contract of employment, or of a business contract (contract for services) by considering the following factors:

- performance of work;
- remuneration; and
- relationship of subordination.

It is important to gather the facts and analyse each of them in light of the specific context of the employment and the intent of the parties.

Step 3

We compare each parties' intentions with their actual working relationship. We confirm that the conditions of the working relationship meet the status that the parties have chosen and that they are consistent with the definitions of the *Civil Code of Québec*.

Factors you should consider

Examine the relationship between the worker and the payer by considering the factors outlined in Step 2.

To help you understand the process, we explain each factor and show some indicators to display whether or not a relationship of subordination exists.

Performance of work

Whether or not there is an employer-employee relationship or a business relationship, the worker must perform the work. It can be part-time or full-time for a specified or indeterminate period.

Remuneration

Remuneration means all considerations and benefits having a monetary value. Whether or not there is an employer-employee relationship or a business relationship, the worker will receive remuneration in exchange for work. The remuneration can be calculated by time, by the piece or another manner.

Relationship of subordination

This factor helps distinguish the employer-employee relationship from a business relationship.

The relationship of subordination is the capacity, the authority or the right of a payer to exercise a control over the worker's activities and the manner in which the work is done.

Degree of control or autonomy

Consider the degree of control held by the payer or the degree of autonomy held by the worker.

The actual degree of control will vary with the type of work and the skills of the worker.

The determination of the degree of control can be difficult when examining the employment of professionals such as engineers, doctors, and IT consultants—because of their expertise and specialized training, they may require little or no specific direction in their daily activities. When examining the factor of control, it is necessary to focus on both the payer's control over the worker's daily activities, and the payer's influence over the worker.

Payer's right to exercise control

It is the right of the payer to exercise control that is relevant, **not** whether the payer actually exercises this right.

It is the control of a payer over a worker that is relevant, and **not** the control of a payer over the end result of a product or service that he or she has purchased.

Indicators that the worker is an employee

- The payer directs and controls many elements of how the work is performed (such as what, who, where, when and how).
- The payer controls the worker's absences, such as sick leave or vacation leave.

- The payer controls the worker with respect to the results of the work and the method used to do the work.
- The payer creates the work schedule and establishes the worker's rules of conduct.
- The worker must perform the work.
- The worker must remit activity reports to the payer.
- The worker's activities are reserved to a single payer (exclusivity of services).
- The payer can impose disciplinary actions on a worker.
- The worker receives training or direction from the payer on how to perform the work.
- The worker accepts to be integrated in the payer's business to have the latter benefit from his work.
- The parties have inserted a non-competition clause in their written contract.

Indicators that the worker is a self-employed individual

- The worker is usually free to work when and for whom he chooses and may provide his or her services to different payers at the same time.
- The worker does not have to perform the services personally. He or she can hire another party to either complete the work or help complete the work.
- The worker can generally choose the time and the manner the work will be performed.
- The worker does not need to be at the payer's premises.
- The worker can accept or refuse work from the payer.
- The working relationship between the payer and the worker does **not** present a degree of continuity, loyalty, security, subordination, or integration, all of which are generally associated with an employer-employee relationship.

Special situations

Special rules concerning CPP, EI and income tax for workers engaged in certain occupations apply. Here are a few examples:

- barbers and hairdressers;
- taxi drivers and drivers of other passenger-carrying vehicles;
- fishers;
- placement and employment agency workers;
- employees outside of Canada.

For information on these workers and the special rules that apply, visit our Web site at www.cra.gc.ca/payroll.