Employee or Self-Employed Guidelines™



NATIONAL PAYROLL INSTITUTE

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INTRODUCTION

As the authoritative source of Canadian payroll knowledge, one of the objectives of the National Payroll Institute (NPI) is to publish guidelines that can be referenced as NPI Payroll Best Practices for payroll practitioners and their employers.

A challenge for many payroll professionals is having their employers understand that payroll is mission critical and requires in-depth knowledge and skills to ensure compliance.

The NPI guidelines can assist organizations with preparing for a payroll audit. They can also provide benchmarking tools for designing and/or implementing Payroll Best Practices.

These guidelines were created by a task force of NPI staff and subject matter expert payroll professionals, ensuring both the accuracy of the information and the practicality of its application, based on real-life experiences within various organizations.

The NPI would like to thank the subject matter experts for their participation on the task force and their contributions to these guidelines.

NPI members should direct any legislative questions on these guidelines to:



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KEYWORD SEARCH AND HYPERLINKS

When viewing any of the NPI's guidelines online, readers can search for keywords appearing within the document. For example, if the information is required on a certain word or phrase, type the word or phrase in the search window (activated by pressing the "Ctrl" and "F" keys simultaneously on most applications).

These guidelines contain **hyperlinks** within the document itself. All government forms, guides and websites discussed within the guidelines can also be accessed using these hyperlinks, which were active at the time of publication. Up-to-date links to major government websites such as Canada Revenue Agency, Service Canada, Revenu Québec and employment/labour standards can be accessed through the **Resources ➔ Government Links** page on the NPI's website, **payroll.ca**.

There is a quiz at the end of the document to test your knowledge and you can also take the quiz online by visiting the guidelines section of our website **payroll.ca ➔ Resources ➔ Payroll Guidelines**

EMPLOYEE OR SELF-EMPLOYED GUIDELINES

One of the more complex payroll issues is determining whether an individual is an employee or a self-employed worker. Although the differences between the two can sometimes appear insignificant, incorrectly assessing the relationship can result in costly repercussions for the employer and the individual.

The NPI's Employee or Self-Employed Guidelines can be used as Payroll Best Practices against which employers can assess their current procedures for determining a worker's status.

DETERMINING EMPLOYMENT STATUS

These guidelines were created by the NPI to provide payroll practitioners with the tools to analyze a working relationship and accurately assess whether an individual must be treated as an employee or a self-employed worker.

The guidelines will focus on compliance regarding the following:

- statutory deductions
- year-end reporting
- employer payroll taxes
- workers' compensation liability

employment/labour standards

In Canada, workers generally fall into one of two categories:

- employee, or
- self-employed worker/independent contractor

Before exploring some of the finer details used to assess the employment relationship, consider the distinction between the following two workers.

Anila works as a payroll supervisor for an organization that provides her with a furnished office and computer. Anila receives a salary and is eligible for a performance bonus at the end of the year. Her manager has the authority to exercise control over what Anila does and how she does it. If Anila is unable to go to work, she cannot simply call a friend to go into the office and do her job for her. The CRA guide that discusses the employee-employer relantionship is the **RC4110** and for **RQ IN-301-V**.

Anila is an employee.

- Her employer must apply statutory deductions to her pay and remit these, along with the employer portions and other employer taxes/levies.
- At the end of the year, Anila must receive a T4 slip (and RL-1 slip if considered a Quebec employee). See the section on **Year-End Reporting** for more details.
- The employer must follow workers' compensation legislation for this employee.
- Anila is covered under employment/labour standards unless there is a collective agreement in place.

Patrick has been hired to paint the exterior of a local mall every Saturday until the job is complete. He charges a flat rate of $1,000 and has several other clients. He uses his ladder, paintbrushes and other material. His clients do not necessarily monitor how Patrick executes the job, as long as they are happy with the result. If Patrick wakes up with a sore throat on Saturday, he can call his friend to take his place, and pays him out of his pocket.

Patrick is self-employed.

- His $1,000 payment is not subject to source deductions.
- At the end of the year, Patrick should receive a T4A slip (and RL-1 slip if considered a Quebec employee). See the section on **Year-End Reporting** for more details.
- The payer should ensure Patrick has his coverage under workers' compensation.
- Patrick is not covered under employment/labour standards.

GOVERNMENT AGENCIES

The following government bodies require an accurate assessment of a worker's employment status and can issue fines and penalties if an employee is incorrectly treated as a self-employed worker/independent contractor. (See the section on **Fines and penalties** for more details.)

- Canada Revenue Agency (CRA)
- Revenu Québec (RQ)
- Provincial/territorial ministries of finance
- Workers' compensation boards (WCB)
- Employment/labour standards

It is important to assess and determine the employment relationship as soon as the individual has been engaged and preferably before the work has commenced.

If the nature of the working relationship changes over time, the details should be revisited to ensure that the status is properly classified.

IMPACT ON WORKER

Employment status affects a person's entitlement to benefits under the following:

- Employment Insurance (EI)
- Québec Parental Insurance Plan (QPIP)
- Employment/labour standards
- Employer pension and benefits

The employment status can also have an impact on how a worker is treated under other legislation such as:

- the Canada Pension Plan (CPP)
- the Québec Pension Plan (QPP)
- the *Income Tax Act* (ITA)
- the Quebec *Taxation Act*
- Workers' compensation

IMPACT ON PAYER

If it is determined the worker and payer have an employee-employer relationship, then the employer has four principal legislative obligations:

1. Statutory deductions and remittances:
    - CPP
    - QPP
    - EI
    - QPIP
    - Federal and provincial/territorial income taxes
    - Northwest Territories and Nunavut Payroll Tax
2. Employer payroll taxes/levies:
    - British Columbia Employer Health Tax (EHT)
    - Manitoba Health and Post-Secondary Education Tax Levy (HAPSET)
    - Newfoundland and Labrador Health and Post-Secondary Education Tax (HAPSET)
    - Ontario Employer Health Tax (EHT)
    - Quebec Health Services Fund (QHSF)
    - Quebec's Commission des normes du travail (CNT)
    - Quebec's Workforce Skills Development and Recognition Fund (WSDRF)
    - Quebec's health and safety premiums (CNESST)
3. Workers' compensation coverage
4. Employment/labour standards compliance (including minimum wage, statutory holiday pay, vacation pay, overtime, notice of termination, etc.)

CRA ASSESSMENT

The CRA's guide **RC4110—Employee or Self Employed**? – helps payers and workers determine the status of the employment relationship. The guide makes a distinction between a "contract of service" (employee) and a "contract for service" (self-employed/contract worker).

CONTRACT OF SERVICE

When a person is hired under a contract of service, that person enters into the **contract as an employee and agrees, for** a limited or indeterminate period, **to** undertake work for the employer.

Within the framework of a contract of service, a person carries out the service of work in exchange for remuneration and the work is carried out according to the direction and control of the employer. The terms of the contract may be either written or verbal, but both are equally binding and enforceable.

CONTRACT FOR SERVICE

Under a **contract for service,** a person, contractor or service provider makes a commitment to another person, the client, to carry out material or intellectual work or to provide a service for a price or fee.

Within the framework of a contract for service, the person is a self-employed worker and is free to choose the means of performing the contract with no relationship of subordination existing with the client in respect of such performance.

SIX-POINT TEST

The CRA looks at the following in applying a "six-point test" to determine if the individual is an employee or a self-employed worker:

1. Control
2. Ownership of tools
3. Subcontracting work
4. Financial risk
5. Responsibility for investment and management
6. Opportunity for profit

Using these six points, the CRA examines the total relationship between the worker and the payer by using the following two-step approach:

Step 1 – The worker and payer are asked what their intent was when they entered into the working arrangement:

- did they enter into a contract of service (employee-employer relationship), or
- did they enter into a contract for service (business relationship)?

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

Having a carefully written agreement setting out the intentions of the parties may offer some protection if either party subsequently changes its opinion and argues that the relationship is not what it is supposed to be.

A written agreement of intent could also help prevent the contractor from being reclassified as an employee, as long as the facts of the working relationship support the stated agreement.

Step 2 – The worker and payer are asked questions that will help the CRA understand the working arrangement and validate whether the intent of both parties is reflected in the facts. The questions asked relate to:

- the payer's control and influence over the worker's daily activities.
- who provides the tools and equipment, and who pays for the cost of replacement, repair and insurance.
- the worker's ability to subcontract the work or hire assistants.
- the degree of financial risk taken by the worker.
- capital investment and management of staff and resources.
- the worker's opportunity for profit.
- any other relevant factors, such as written contracts.

Note:

The indicators and factors differ slightly if the contract is formed in the province of Quebec where the Civil Code of Law is in effect. Please see the sections **Contracts formed in Quebec** and **Revenu Québec Assessment** of these guidelines.

The following excerpts from the CRA's **RC4110** guide explain each factor and include indicators that show whether the worker is an employee or self-employed. After each principle factor, the NPI has inserted an example for illustration purposes.

Control

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

Note:

The key indicator regarding control is the *ability* of the payer to exercise control over the worker, even if none is exercised.

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 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 result of a product or service 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 and when 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 his or her activities.
- 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, security, subordination, or integration, all of which are generally associated with an employer-employee relationship.

Example:

George works as a webmaster for a non-profit organization. He was hired partly because he already possessed all of the required knowledge and skills and did not require any training.

George is responsible for the general maintenance of the website and has proven he can be trusted with the design concept of the organization's website. The Administration Manager assigns priority over George's specific projects.

George can accept work from other payers, as long as the work is only completed after hours or on weekends and not using the organization's computer equipment.

George is more than likely an employee.
Although George works quite independently, his employer still does have the ability to control what projects he works on and when including only allowing him to work for other payers on his own time.

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. Also, 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 specialized clothing, appliances, stethoscopes, musical instruments, computers, and vehicles such as trucks and tractors.

Self-employed individuals often supply the tools and equipment needed for 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 tools. The courts have acknowledged that because a worker is needed to provide tools of the trade, this does not in itself deem that worker to be a self-employed individual. For example, many skilled tradespeople such as auto mechanics are required to supply their 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. Also, the payer is responsible for the 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. Also, the worker is responsible for the costs of repairs, insurance, and maintenance to the tools and equipment.
- The worker has made a 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 workspace, is responsible for the costs to maintain it, and performs substantial work from that site.

Example:

Danielle works on a construction site where all electrical tools are provided by the payer. In addition to her salary, Danielle receives a tool reimbursement for the use of her non-electrical hand tools. The payer decides which sites and projects Danielle will work on.

Danielle is more than likely an employee.
In addition to the element of control, Danielle's employer provides all electrical tools as well as a tool reimbursement for the employee-owned hand tools.

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 cannot hire and send replacements. The worker has to 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 who the worker hires.

Example:

Marc is the payroll coordinator for a large retailer. When Marc breaks his leg during a skiing accident, he recommends the services of his cousin, Louise, to his employer as his replacement. Louise has her Certified Payroll Manager certificate and is currently out of work. Marc's employer requires Louise to come in for a formal interview before they will consider putting her on the payroll.

Marc is more than likely an employee.
Marc cannot send in his replacement. If he cannot do the job himself, it is the employer who will consider hiring a replacement.

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. Self-employed individuals on the other hand 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 and are eligible to be claimed as business expenses on the worker's income tax return.

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 fulfill 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 his or her 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 and actively markets his or her services.

Example:

Marie-Lyne works from her own home as a translator. She maintains a spare room in her home as an office, which she keeps equipped with a reliable computer and hard drives.

Marie-Lyne has purchased ads in several human resources journals and is working concurrently for a few different organizations. She is paid by the word and can work on the projects at her discretion, as long as she meets her deadline. If she does not meet a deadline, she will not be paid for that particular job.

When work is abundant and she will not be able to meet all deadlines, Marie-Lyne hires other reliable translators to help her out. When work is slow, Marie-Lyne must still pay for her office expenses, journal ads, and all other materials related to her job.

Marie-Lyne is more than likely a self-employed worker.
She is responsible for the costs of maintaining her workspace. She also advertises and can hire helpers to when necessary. Marie-Lyne bears the financial risk of not getting paid if any of her deadlines are not met.

Responsibility for investment and management

Consider the degree of responsibility for investment and management held by the worker. Does the worker need to make any investment to provide the services?

A significant investment is evidence that a business relationship may exist. 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 a 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.

Example:

Matteo has invested $150,000 of his own money to start an IT consulting business. When a private clinic entered into a contract with Matteo to review their IT system, Matteo sent in one of his staff consultants, Adrianna, who will report to him throughout the project.

Matteo is more than likely a self-employed worker.
Matteo has made a capital investment in his company, hires and manages staff to help perform the work, and has established a business presence.

Adrianna is more than likely an employee of Matteo's.

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 or a risk of a loss, a worker has to have potential revenue and expenses, and one could exceed the other. Employees normally do not have the chance of a profit or 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 revenue over expenses.

Employees may have expenses directly related to their employment, such as automobile expenses or 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 more than their remuneration.

Self-employed individuals normally have the chance of profit or risk of loss, because they can 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 revenue and/or decrease their expenses to increase profit.

This factor has to 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.

Similarly, some self-employed individuals may be paid on an hourly basis; however, 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.

Example:

Suzanne works for a private college as a French language instructor. She is paid a regular salary and also received a bonus last year for excellent student reviews. Suzanne is covered under the college's benefits plan.

Suzanne also offers private French lessons on her own time for which she receives $35/hour. She pays for the photocopying of all student handouts at a local business centre. Suzanne sometimes takes the entire summer off to travel and hires a replacement for $25/hour to offer the lessons on her behalf.

Suzanne is more than likely an employee of the college.
The bonus Suzanne received is viewed as a performance bonus and does not represent profit over any expenses she incurred in performing her duties.

Suzanne is more than likely a self-employed worker during her private lessons.
Suzanne has the opportunity for making a profit when her total revenue ($35/hour) surpasses her total expenses (student handouts, hired substitutes, etc.).

SUMMARY OF KEY FACTORS

The following chart summarizes the indicators used by the CRA when assessing the answers provided by both parties.

Factor	Indicates worker is an employee	Indicates worker is self-employed
Control	• The relationship is one of subordination. • The payer can direct, scrutinize, and effectively control many elements of how the work is performed. • The payer can control both the results of the work and the method used to do the work. • The payer can determine what jobs the worker will do. • The worker may receive training or direction from the payer on how to do the work.	• The work is done independently and without anyone overseeing how the job is being done. • The worker is usually free to work when and for whom they choose and may provide their 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.
Tools and equipment	• Payer supplies most of the tools and equipment. • The worker supplies the tools and equipment and the payer reimburses the worker for their use.	• The worker provides the tools and equipment required and is responsible for the cost of repairs, insurance and maintenance, and retains the right over the use of these assets.
Subcontracting work or hiring assistants	• The worker cannot directly hire helpers or assistants.	• The worker does not have to perform the service personally; they can hire another party to complete the work.
Financial risk	• The worker is not usually responsible for any operating expenses. • The worker is not financially liable if he or she does not fulfill the obligations of the contract.	• 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.
Responsibility for investment and management	• The worker has no capital investment in the business.	• The worker has capital investment, manages his or her staff, can hire and pay individuals to help perform the work, and has established a business presence.
Opportunity for profit	• The worker is not in a position to realize a business profit or loss.	• The worker is compensated by a flat fee and can move onto the next contract if the work is completed early.

SPECIFIC EMPLOYMENTS

In addition to the general guidelines, the CRA also has information on its website for determining the status of a worker under **specific employments**.

In the construction industry, for example, the fact that a worker is required to supply hand tools does not necessarily indicate the worker is self-employed.

Please see the following for more specific details:

- **Workers engaged in construction**
- **Workers engaged in fishing**
- **Real-estate agents**
- **Placement/employment agencies**
- **Workers who own and operate heavy machinery**
- **Agriculture and horticulture**
- **Circus and fair**
- **Police forces and extra duty**
- **Rescue operations and/or abating a disaster**

STUDENT ASSISTANTSHIPS

As a condition of receiving financial assistance, undergraduate or graduate students are often expected to do some teaching, marking of exams, or research as a member of the university's staff.

Some of the financial assistance will more than likely be considered as employment income, as per paragraphs 14 and 15 of the CRA's **S1-F2-C3—Scholarships, Research Grants and Other Education Assistance**.

Example:

Davia is doing a graduate degree in economics and has received $50,000 of financial assistance from the university. $35,000 was in the form of a fellowship and $15,000 was under the condition that she does some assistant teaching, marking, and research. The $15,000 is to be treated as employment income and is subject to all statutory withholdings, remitting and reporting. The $35,000 is to be treated as a fellowship and is reported using Code 105 of the T4A slip.

Example:

Ellios is doing a graduate degree in engineering and has received $60,000 of financial assistance from the university with the condition that he does some assistant teaching, marking and research.

The university has not indicated which portion is in exchange for the employment components of the financial assistance; therefore, the entire amount would technically be considered as employment income since the terms of the agreement requires the student to render service in return.

However, if this results in a rate of pay that is considerably more than the going rate for similar services, only that amount that would be considered comparable for such services would be considered as employment income. Using the previous example, a similar amount of $15,000 might be considered as a fair allocation of the employment portion of the total financial assistance.

RETROACTIVE STATUS

If an employer determines that an individual should have been treated as an employee, they should begin treating that individual as an employee as soon as possible. The employer can also go back to the beginning of the year and calculate and remit any C/QPP, EI and QPIP that should have been paid in the current year.

The fact that the individual may receive a T4 and a T4A slip in the same year from the same payer may trigger the CRA to perform an audit. The CRA may request that the employer cancel the T4A slips and create T4 slips for years in which the individual in question was treated as self-employed when they should have been treated as an employee.

Also, the CRA could impose penalties and interest on unpaid remittances. (See the section on **Fines and Penalties** for more details.)

Therefore, it is very important for organizations to correctly assess the employment status from the beginning of the working relationship. If unsure, a payer may want to consider treating the individual as an employee and taking source deductions. **It is much easier to refund C/QPP, EI and QPIP than to recoup unpaid amounts from the employee after the fact.**

CONTRACTS FORMED IN QUEBEC (CRA TREATMENT)

When the employment contract was formed in Quebec, the status of the worker must be determined under both the federal and provincial criteria for Quebec.

When examining the working relationship, the CRA uses the following three-step process.

Step 1 – The worker and payer are asked what their intent was when they entered into the working arrangement and may be asked to provide a copy of the contract if there is one.

Step 2 – The CRA examines the factors of employment to determine if the relationship meets the definition of a contract of employment or a business contract (contract for services) according to the ***Civil Code of Québec.*** The factors considered are:

- performance of work
- remuneration and
- relationship of subordination

Step 3 – Each party's intention is compared with the actual working relationship, followed by a confirmation 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.***

Quebec employers would also have to assess the working status according to RQ's test, which is explained in the following section.

REVENU QUÉBEC ASSESSMENT

RQ has two helpful publications that can be used by both the worker and payer: **RR-65.A-V—Questionnaire for Determination of Status of an Employee or a Self-Employed Person** and the **IN-301-V—Employee or Self-Employed Person?**

RQ uses the following six interrelated criteria when assessing the working relationship:

- subordination in the performance of work
- the financial or economic criterion
- ownership of tools
- integration of the tasks carried out by the worker
- the specific result of the work
- the attitude of the parties with respect to the relationship

Subordination in the performance of work

Subordination exists if the person who provides the work is in a position of authority concerning the worker. Subordination is the most important criterion and may be the crucial factor in determining whether a worker is an employee or is self-employed.

The financial or economic criterion

In an employee-employer relationship, the employer covers the operating costs of the organization and assumes the financial risks; the employee does not assume any financial risk.

A self-employed individual, however, may make a profit or incur a loss and is responsible for operating costs (since it is their own business).

Ownership of tools

In an employee-employer relationship, the employer generally owns the tools, equipment and materials, provides everything necessary for the employee to carry out the work and covers the related operating costs. A self-employed worker ordinarily provides their tools and is responsible for repairs, insurance and maintenance costs.

Integration of the tasks carried out by the worker

If the tasks carried out by the worker form an integral part of the activities of the employer's business, there is probably an employee-employer relationship. An outside consultant is self-employed if the services they render to a business are not activities that the business normally engages in.

As a rule, an employee derives work income principally from the work they carry out for a single employer, whereas a self-employed individual provides services to several clients.

The specific result of the work

The services of a self-employed worker are, as a rule, retained to accomplish a specific task and the worker is free to determine the method that will be used to achieve the results. Once the specific task provided for in the contract is completed, the business relationship ends.

The attitudes of the parties regarding their relationship

This criterion refers to the agreement that may exist between the two parties concerning conditions of work. The following factors may be taken into consideration:

- the fact that the employer pays the contribution to CSST on wages paid to the worker;
- the overall interpretation of the work contract and the terms governing its renewal;
- the worker's eligibility for the employer's group insurance plan; and
- the payment of severance pay.

Example:

Anthony has an annual contract with several retail stores to clear their parking lot and walkways whenever there is a snowfall of three centimetres or more. He does not work under supervision or on-call and uses his snowplow and other tools as required. Anthony has coverage under the CNESST.

Anthony has negotiated four-month contracts from December 1 through March 31 for fixed dollar amounts regardless of the number of times the parking lots require clearing.

Anthony is more than likely a self-employed worker.

- Anthony does not work exclusively for a single-payer.
- He performs the work without supervision and decides when to clear the snow.
- Anthony owns the tools he requires to complete his obligations. He is also responsible for the upkeep of his snowplow and related expenses such as fuel.
- Anthony also has coverage under the CNESST.
- Anthony's profits are at the mercy of the weather. During a mild winter, his services and related expenses may be less than his revenue; however, in a stormy winter, he may risk a loss as his expenses may exceed the pre-agreed to revenue, especially if he has to hire additional help.
- The snow clearing contract is not an integral part of the retail stores and is not directly related to their business.

CLEAR INTENTIONS

Both parties' intentions should be well documented in the independent contractor agreement. Without the establishment of clear intentions, payers could be faced with significant fines and penalties should a government agency determine that the worker should have been treated as an employee. (See the section on **Fines and Penalties** for more details.)

If the intention is to hire an employee, an actual employment contract should be drawn up and signed by both parties. Please see **Appendix 1** for a sample employment contract and **Appendix 2** for a sample Independent Contractor Agreement.

If the intention is to hire a self-employed worker, payers must also ensure that the facts of the employment status accurately reflect a contract for service rather than a contract of service.

(See **Appendix 3** — Creating an Independent Contractor Agreement — for a detailed list of Dos and Don'ts when creating an independent contractor agreement.)

REQUESTING A RULING

When the employment status cannot be established, either the worker, the payer, or both, can apply to the CRA and/or RQ for a ruling.

Rulings may be obtained from CRA by completing form **CPT1—Request for a Ruling as to the Status of a Worker under the Canada Pension Plan and or the Employment Insurance Act** and from RQ by completing form **RR-65-V—Application for Determination of Status as an Employee or a Self-Employed Person**.

The time limit for requesting a ruling

Although the employment status should be determined before the work being done, a worker or payer can request a ruling before June 30 of the year following the year covered by the application and by April 30 if the employment is in Quebec. For example, if the employment took place in 2020, the ruling request has to be made before June 30, 2021 (or by April 30, 2021 for Quebec).

If, however, it is determined that there was an employee-employer relationship, the employer would be responsible for remitting both the employee and employer portions of C/QPP, EI and QPIP. The employer would then have 12 months in which to attempt to recuperate the employee portion at a rate of no more than one pay period amount at a time.

It is therefore recommended that the worker be treated as an employee from the very beginning of the employment period as it is easier to reimburse statutory deductions than to try to recuperate these amounts after the fact.

COURT CASES

The results of previous court cases may be looked at when considering how the courts might rule regarding a worker's employment status. When in disagreement with the court's decision, the worker and/or payer may apply for an appeal.

One of the most influential cases began when The Royal Winnipeg Ballet (RWB) requested a ruling from the Minister of National Revenue on whether its dancers were employees or independent contractors. The status of the dancers would determine whether RWB had any legal obligation to contribute to CPP or pay premiums for EI.

Although it was not the intention of either the dancers or the ballet company to have entered into an employee-employer relationship, the Tax Court of Canada ruled that the dancers were employees and therefore RWB was required to remit employer payments and deductions.

The trial judge determined that the parties' intentions were irrelevant when determining the legal relationship between the parties, stating that "intent only becomes a factor in the event the relevant legal tests yield no definitive result". RWB appealed, stating that the intention of the parties should be considered.

In March 2006, the Federal Court of Appeals' assessment of the total relationship between the two parties remained unclear and, therefore, stated that regard should be given to how the parties viewed the relationship and conducted themselves. The previous decision was therefore overruled and the dancers were to be treated as self-employed.

The Appeals court determined that intention would only be disregarded if the terms of the contract did not reflect the legal relationship that the parties profess to have intended.

For more details regarding this case, please see **Royal Winnipeg Ballet v. M.N.R. (F.C.A.), 2006 FCA 87, [2007] 1 F.C.R. 35** in the Federal Courts Reports.

Other court cases on employment status can be found listed on the final page of the CRA's **RC4110** guide.

COMMON MISCONCEPTIONS

The following addresses common misconceptions when it comes to determining an individual's employment status.

PROFESSIONAL/SPECIALIST STATUS

It is the *employment* of the person, and not the person themself, that must be assessed and the fact that the worker has a professional or specialist status does not mean that this individual has not been engaged as an employee.

For example, a Certified Accountant (CA) might have been hired by an organization as a full or part-time employee, or the CA might have been hired as a self-employed worker. The fact that the individual holds a CA designation, however, does not in itself determine the employment status.

PREVIOUS ASSESSMENTS/CHANGE IN WORKING RELATIONSHIP

It is the facts of the **current** case which determine whether an employee-employer relationship exists and not how the individual was assessed and treated in the past or by another payer.

If the nature of the working relationship has changed, the details should be revisited to ensure that the status is properly classified.

Example:

An organization is implementing a new system to integrate and organize data for various parts of its business including finance, human resources, sales and marketing.

Maria has several years of experience in software solutions and markets her services as an implementation specialist. She signs a six-month contract with the organization to manage its implementation project.

Maria has agreed to a fixed fee for the project and will set her work schedule. She may bring in additional help who will report to and be paid directly by her.

Maria is more than likely a self-employed worker:

- Her attendance is not monitored.
- She is paid a fixed fee for her services.
- She has the option to hire additional workers to assist her.
- She has invested in marketing and advertising materials for her business.
- She is working on a fixed-term project to which she brings specific expertise.

Following a change in the working relationship, it is a Payroll Best Practice to re-assess the characteristics of the new relationship.

Example:

After the implementation is complete, the organization decides to add a new position, Business Analyst, reporting directly to the Director of Business Intelligence who will be responsible for monitoring performance objectives and attendance. Maria accepts the job offer of this role and signs a new contract that provides a base salary and an annual vacation. She is eligible to join the employer's benefits plan and will participate in the bonus program, which is based on performance.

Maria is more than likely an employee

- Her attendance is now monitored.
- She is paid an annual salary for standard working hours.
- Performance objectives and results are managed by the organization.
- She is provided with employee benefits and vacation.

MULTIPLE CONTRACTS OF EMPLOYMENT

A person may occupy two different positions within the same organization. While each contract or working relationship must be assessed independently, it may be more difficult to prove that a contract for service exists when the individual is also an employee of the organization.

One important question employers should ask themselves is: Were it not for the employee-employer relationship, would the employee have been hired to do the job?

Example:

Paul is a full-time teacher at a community college. This year, the school would like photos of the senior class during their weekend recital so Paul offers to attend and take the photos in exchange for $150.

Paul might still be considered to be taking photos under an employee-employer relationship.
Some factors which *could* suggest that Paul took the photos as a self-employed worker include:

- Paul had to apply for the job and was not given the assignment simply because he was already an employee.
- Paul was not under the direction of the school and could assume a certain amount of artistic license.
- Paul used his equipment.
- Paul was able to hire an assistant which he paid out of pocket.
- Having photos taken is not considered an integral part of the school's business.

Example:

Paulette is a full-time music teacher at a community college. She was also asked to teach a continuing education class every Monday night for which she will receive a flat rate separate from her regular salary. Similar to her regular classes, the continuing education classes must follow a set curriculum and Paulette can make all student handouts using the free photocopier in the teachers' lounge. If Paulette cannot make one of the evening classes, her suggested replacement must be approved by the school.

Paulette is more than likely offering continuing education classes as an employee.

- Paulette is still under the direction and control of the school.
- The school provides Paulette with the tools she will need (photocopied handouts).
- Paulette cannot hire a replacement without the school's authorization.
- The continuing education program is integral to the school's business.

CASUAL OR PART-TIME EMPLOYMENT

The same criteria to determine the employment status of a full-time worker is used to determine the status of a part-time or casual worker. The fact that an individual may be employed on a part-time or casual basis has no bearing on whether the individual is considered to be an employee or a self-employed individual. It is the *nature* of the working relationship and not the amount of time spent working for the employer that is relevant in determining the employment status.

Example:

The payroll manager's 17 year-old daughter, Marie, came into the office from 9am to 5pm one day to file year-end documents under the direction of her mother. She was given file folders, markers, and a computer to complete an inventory spreadsheet. Marie was paid $12/hour and no group benefits were offered.

Marie is more than likely an employee.

- Marie's hours of work are determined by the employer.
- She does not control the work to be completed or supply tools or equipment.
- Marie is not responsible for the profit or loss of the organization she is working for.

MATERNITY OR OTHER LEAVE REPLACEMENTS

Both workers and payers often think maternity or other leave replacement can be fulfilled by an independent contractor. This is not always the case. In most situations, the replacement worker would be considered an employee if they are assuming the same roles and responsibilities as the employee going on leave and are under the same level of direction by the payer.

Example:

Martha is going on maternity leave for a year and proposes to her manager that her sister, Joan, replace her during the absence. Joan is qualified for the position but she does not want to be an employee as she owns a small business on the side. She would rather be paid a monthly amount by Accounts Payable after she submits an invoice.

Joan will not have access to the employer benefits plan nor be eligible for the bonus plan based on performance. Joan will take over all of Martha's duties and will report to the same manager who has authority over the department. Most of the time, Joan will use Martha's office to do her work, but she is also asked to occasionally work from home using her computer.

Joan is more than likely an employee.
Control is the most important criterion in any relationship whether exercised or not. In this case, it is Joan's manager who has the authority to control how the department runs, including control over Joan's duties.

Joan will be using the employer's equipment and will effectively be replacing someone who is an employee in duties, function and reporting. The fact that she will not be receiving bonuses or benefits does not affect her status as an employee as these are considered discretionary compensation.

Joan should not be invoicing the company and should be included on the payroll with all the statutory deductions, remittances and reporting.

FORMER EMPLOYEE BROUGHT BACK AS A SELF-EMPLOYED CONSULTANT

An employee who resigns or retires from employment may then offer services to the former employer as an independent consultant but only if the facts indicate that there is no longer an employee-employer relationship.

If the person is brought back to perform their duties in the same manner and exclusively for their former employer, it is unlikely that they would be regarded as an independent contractor.

PAYMENT METHOD

Even if a worker's invoice is sent to an organization's accounts payable department for processing, this does not necessarily mean that the worker is self-employed.

GST/HST/QST CONSIDERATION

Anyone can acquire a GST/HST/QST number as long as the individual opens a business in their name. The fact that someone has a GST/HST/QST number would not in and of itself be a determining factor when it comes to establishing whether or not the individual is self-employed or an employee.

PERSONAL SERVICES BUSINESS

In addition to the possibility of a worker being classified as either employed or self-employed, there is a third category that is almost a combination of the two. A Personal Services Business (PSB) is where the relationship between a small business worker and the client is similar to an employee-employer relationship. Were it not for the worker being incorporated, the worker would be considered an employee of the payer.

The actual establishment of a PSB falls outside the scope of these guidelines, as does the personal and corporate income taxes and credits associated with such entities. What is important for the payer, however, is that there is a difference between engaging the services of someone who has merely registered with GST/HST and someone who has incorporated.

As previously mentioned, the fact that a worker has a GST or HST number is not a determining factor of worker status. When the worker is actually incorporated and is providing services under the PSB however, the employer has now entered into a business to business relationship. As such, payments made to the worker under the PSB would not be subject to statutory withholdings or reporting.

Note:

The payer should confirm that any invoices they receive from a PSB worker are in the name of the incorporated PSB, and not simply in the individual worker's name without reference to the corporation.

YEAR-END REPORTING

The required year-end reporting of income will depend on the status of the worker, as illustrated in the table below.

Worker Status	CRA	Quebec
Employee	T4: Boxes 14, 24, 26 & 56 (if applicable)	RL-1: Boxes A, G & I
Self-Employed	T4A: Box 048 (if applicable, the self-employed commission reported in Box 020)	RL-1: Box O, Code RD[1]

[1] Generally speaking, you only need to report fees and other amounts paid to self-employed individuals in box O (code RD) of the RL-1 slip if you withheld Québec income tax on them. However, beginning with the 2020 taxation year, you will have to report fees and other amounts paid to self-employed individuals for **building service work performed inside or outside a public building** in box O (code RD) of the RL-1 slip even if you did not withhold Québec income tax on them. This change only concerns work and public buildings defined in the *Decree respecting building service employees in the Québec region* and the *Decree respecting building service employees in the Montréal region*. This new requirement applies to RL-1 slips filed for 2020 onward.

https://www.revenuquebec.ca/en/businesses/source-deductions-and-employer-contributions/filing-rl-slips-and-the-rl-1-summary-general-rules/rl-1-slip-employment-and-other-income/principal-changes/

Note:

When the T4A slip was redesigned in 2010, payments for fees for services were assigned to Box 048. Until the CRA undertakes a review to clarify the types of fees for services that are to be reported on the T4A slip, taxpayers will not be penalized for failing to complete Box 048.

WORKERS' COMPENSATION

Employers are responsible for following workers' compensation legislation, usually in the form of providing employees coverage against work-related accidents or illnesses.

Independent contractors, on the other hand, are responsible for their coverage. It is in the best interest of payers to request a clearance certificate/letter from all contractors. This clearance letter confirms coverage also is in place and shows that the WCB account is in good standing.

In certain jurisdictions, the employer may be responsible for WCB premiums for any independent contractors who do not maintain their coverage. In jurisdictions where coverage is compulsory (either maintained by the contractor or the employer), any lack of coverage identified through an audit could result in the payer's back-payment of WCB premiums, penalties and interest.

Some workers' compensation boards offer questionnaires for workers or payers who are unsure of the employment status.

Note:

- Clearance certificates may only be valid for a limited duration. If the clearance certificate supplied by your independent contractor has an end date, you must request an updated certificate to ensure current coverage.
- Clearance certificates from one jurisdiction may not be valid in another jurisdiction.
- Not all industries are covered by all workers compensation legislation. Optional coverage may be available for individuals employed in these industries

EMPLOYMENT/LABOUR STANDARDS CONSIDERATION

Employment/labour standards legislation (ESA) across Canada also requires the payer to properly assess whether the worker is an employee or independent contractor/self-employed. While some of the criteria used to examine the employment status are similar to the indicators used by the CRA and RQ, there may be certain differences.

For example, most jurisdictions look at coverage under the payer's benefits plan as well as the ability to set hours of work as important points to consider.

The following table for **Determining the Employer/Employee Relationship** is used for determining the employment status under the *Canada Labour Code* (CLC). The CLC has also published a **Questionnaire for the Payer** and a **Questionnaire for the Worker** to help determine the employment status.

Note:

While the table and questionnaires were created for federally regulated employees who fall under the CLC, the indicators used are basic enough to get an idea of what other jurisdictions may apply.

When in doubt, payers and/or workers should refer to the ESA of the jurisdiction in question.

Employee Characteristics		Independent Contractor Characteristics		Worker	
				Employee	Contractor
Works exclusively for the payer	☐	May work for other payers	☐	☐	☐
Payer provides tools	☐	Worker provides tools	☐	☐	☐
Payer controls duties, whether that control is used or not	☐	Worker decides how the task is completed	☐	☐	☐
Payer sets working hours	☐	Sets own working hours	☐	☐	☐
Worker must perform services	☐	May hire someone to complete the job	☐	☐	☐
Provision of pension, group benefits	☐	Not allowed to participate in payer's benefits plans	☐	☐	☐
Worker is paid vacation pay	☐	No vacation pay and no restrictions on hours of work or time off	☐	☐	☐
Payer pays expenses	☐	Worker pays own expenses	☐	☐	☐
Paid salary or hourly wage	☐	Worker is paid by the job on a predetermined basis	☐	☐	☐
Reports to payer's workplace regularly	☐	Submits invoices to the payer for payment	☐	☐	☐
		Worker may accept or reject work	☐	☐	☐
Result				☐	☐

EMPLOYER'S DUTIES UNDER ESA

Numerous obligations under ESA must be adhered to if the worker is characterized as an employee. Examples of employment/labour standards include the following:

- minimum wage
- statutory holiday pay
- vacation pay
- overtime
- notice of termination
- severance pay (where applicable)

Also, failure to provide pregnancy or parental leave when required under ESA can lead to discrimination complaints under Human Rights legislation.

The incorrect characterization of a worker as an independent contractor may result in orders being made requiring payment of these various obligations. The obligation which tends to appear the most frequently is termination notice and severance pay.

WRONGFUL DISMISSAL CLAIMS

The termination of an independent contractor who later claims to have been an employee may give rise to a claim of wrongful dismissal against the organization. The worker whose contract is terminated or not renewed is often seeking monetary claims for such things as pay in lieu of notice and severance pay.

Although the written contract between the so-called independent contractor and the organization may provide fewer rights for the contractor in the event of the termination of his or her services, courts will disregard such provisions if it is found that the individual was an employee. The inferior contractual terms could be found in violation of certain sections of the ESA that prohibit contracting out of the minimum standards of that legislation.

> The Ontario Court of Appeal recently awarded a former employee of La-Z-Boy Canada Limited twenty months pay in lieu of notice, finding that the designation by the payer of the employee as an independent contractor was not valid.
>
> The employee was terminated after 23 years of service with the provision of just sixty days notice under the written contract which designated the sales representative an independent contractor. The Court of Appeal held that the facts of the relationship unequivocally pointed to the existence of an employee-employer relationship. See **Braiden v. La-Z-Boy Canada Limited** for more details.

SEVERANCE CONSIDERATIONS FOR CONTRACTORS

While workers are typically classified as either an employee or aa independent contractor, recent court cases have identified an intermediate category of worker: the dependent contractor.

In **McKee v. Reid's Heritage Homes Ltd.,** the Ontario Court of Appeal (OCA) defined a dependent contractor as "those non-work relationships that exhibit a certain economic dependency, which may be demonstrated by complete or near-complete exclusivity".

Courts will first determine whether a worker is an employee or a contractor. If the worker is found to be a contractor, the next stage is to distinguish between independent or dependent contractors.

Making a distinction between independent and dependent contractors provides some protection to workers who are technically contractors, but whose economic dependence leaves them exposed in a way that neither employees nor true independent contractors are. The sole factor in this determination is exclusivity.

Generally, an exclusivity agreement is a clause in a contract, or within the reality of the actual relationship, that prevents a party to the contract from entering into a similar contract with a third party. As such, the payer may have to provide reasonable notice upon terminating dependent contractors.

SELF-EMPLOYED WORKERS AND UNIONS

Independent contractors are prohibited from joining a union. In response to this, some labour relation statutes have broadened their definition of employee to include the "dependent" contractor. As a result, individuals may still be considered independent for tax purposes; however if found to be dependent on a single-payer, they could have access to unionization.

FINES AND PENALTIES

Through a government audit, it may be determined that the employer failed to treat a worker as an employee and the employer could be held responsible for the following fines and penalties. In some situations, the directors may also be held accountable.

Government	Infraction	Penalty
CRA	Failure to deduct CPP or EI	• Employer responsible for both employee and employer portions. • Additional 10% of amounts not deducted. • 20% for subsequent failures to deduct in same calendar year if made knowingly or under circumstances of gross negligence.
	Failure to deduct income tax	• 10% of amounts not deducted. • 20% for subsequent failures to deduct in same calendar year if made knowingly or under circumstances of gross negligence.
	Failure to remit or late remittance of CPP, EI or income tax	• 3% to 10% of unremitted or late amounts plus interest calculated at the prescribed rate and compounded daily; generally only applied to the unremitted or late amount more than $500. • 20% for subsequent late or failures to remit in same calendar year if made knowingly or under circumstances of gross negligence.
	Failure to file and issue a T4 slip	• $100 to $7,500.
	General	• As per the CRA's **Penalties** webpage, an employer who fails to comply with the deducting, remitting and reporting requirements could be prosecuted and fined additional amounts from $1,000 to $25,000, or be fined and imprisoned for a term of up to 12 months. • Directors of the organization could also be held jointly and severally or "solidarily" liable along with the corporation to pay the amount due. (See **IC89-2—Directors' Liability** for more details.)
RQ	Failure to deduct QPP or QPIP	• Employer responsible for both employee and employer portions. • additional 15% of amounts not deducted. • up to an additional 25% if the omission is made intentionally.
	Failure to deduct income tax	• 15% of amounts not deducted. • up to an additional 25% for grave negligence.
	Failure to remit or late remittance of QPP, QPIP, income tax, QHSF, CNT, WSDRF or compensation tax	• 7% to 15% of unremitted or late amounts plus interest calculated at the prescribed interest rate. • up to an additional 25% if the omission is made intentionally.
	Failure to file and issue RL-1 slip	• $25 to $2,500 per slip.
CNESST	Failure to remit or late remittances	• 7% to 15% of unremitted or late amounts.
BC EHT	Failure to file	• 5% of the amount owing • 10% for repeated failure
	Failure to provide information	• $100 or $25/day to a maximum of $2,500
	Interfering with inspection or audit	• $100 for each contravention
	Gross negligence	• The greater of $100 or 50% of additional tax owed • Could also be fined an amount not less than 50% and not more than 200% of the amount sought to be evaded and/or imprisonment of not more than two years for a general offence.

Government	Infraction	Penalty
MB HAPSET	Failure to pay or late payments	• 8.95% of the unpaid balance plus retroactive interest.
NL HAPSET	Failure to pay or late payments	• 10% of the unpaid balance plus retroactive interest, compounded daily. • Possible additional fines of $200 to $10,000 or imprisonment of 2 weeks to 6 months. • Directors may be held responsible.
NT Payroll Tax	Failure to register, deduct or remit Payroll Tax	• From $100 to $25,000 plus 50% up to 200% of the amount of tax that should have been collected or remitted, or a combination of this fine and imprisonment for a term not exceeding 2 years
NU Payroll Tax	Failure to remit payment	• 10% of the amount owing.
	Failure to file	• 20% of the amount due.
ON EHT	Making false statements (including omissions)	• 25% of the additional tax found to be payable. • Could also be fined an amount not less than $500 or 25% of the amount of tax payable and/or imprisonment of not more than two years.
	Failure to keep records	• $50 to $500/day.
	Obstructing an auditor/withholding information	• $50 to $10,000.
	Default on any obligations	• Employers could also face additional fines and/or imprisonment. • Corporations could be dissolved if in default of the employer's obligations. • Officers, directors or agents could also be considered liable.

FEEDBACK

The NPI appreciates your comments and welcomes your suggestions as we seek to continually improve our member resources. Please direct any feedback on these guidelines to:

Janet Spence, CPM
Manager, Compliance Services and Programs
The National Payroll Institute
Email: **guidelines@payroll.ca**

TEST YOUR KNOWLEDGE

Please read each scenario and select the correct response. (The answers are provided and explained on the following pages.)

1. Which of the following is **not** a factor when determining if a worker is an employee or self-employed?

   A. Ownership of tools

   B. Chance of Profit/Risk of loss

   C. Method of payment

   D. Control

2.. Which of the following is **not** usually considered when determining if a worker is an employee or self-employed in the province of Quebec?

   A. The fact that the work is only casual in nature

   B. Integration of the tasks carried out by the worker

   C. The financial or economic criterion

   D. The attitude of the parties with respect to the relationship

3. True or False? A worker **cannot** be assessed as an employee if an invoice is submitted for the work including GST/HST/QST.

4. True or False? When assessing the employment status of a worker, government bodies will consider the payer's right to exercise control over the worker, even if none is exercised.

5. Which of the following statements are true?

   A. A worker is determined as an employee at the payer's discretion.

   B. A worker is determined as an employee at the worker's discretion.

   C. An employer who fails to treat a worker as an employee must file a T4A slip for any payments issued.

   D. An employer who fails to treat a worker as an employee could be faced with monetary fines and penalties including prison terms.

ANSWERS

1. Which is **not** a factor when determining if a worker is an employee or self-employed?

   A. Ownership of tools

   B. Chance of Profit/Risk of loss

   C. Method of payment

   D. Control

   The correct answer is C. A worker who is paid through Accounts Payable may be determined to be an employee.

2. Which of the following is **not** usually considered when determining if a worker is an employee or self-employed in the province of Quebec?

   A. **The fact that the work is only casual in nature**

   B. Integration of the tasks carried out by the worker

   C. The financial or economic criterion

   D. The attitude of the parties with respect to the relationship

   The correct answer is A. Casual employment must go through the same assessment to determine if an employee-employer relationship exists.

3. True or False? A worker **canno**t be assessed as an employee if an invoice is submitted for the work including GST/HST/QST.

   This statement is false. A worker who charges GST/HST/QST may be considered to be an employee.

4. True or False? When assessing the employment status of a worker, government bodies will consider the payer's right to exercise control over the worker, even if none is exercised.

   This statement is true. It is the ability of the payer to exercise control that is key, not whether control was actually exercised.

5. Which of the following statements are true?

   A. A worker is determined as an employee at the payer's discretion.

   B. A worker is determined as an employee at the worker's discretion.

   C. An employer who fails to treat a worker as an employee must file a T4A slip for any payments issued.

   D. An employer who fails to treat a worker as an employee could be faced with monetary fines and penalties including prison terms.

   The correct answer is D. Employers could face monetary fines and penalties, including prison terms if they knowingly treat an employee as a self-employed worker.

RESOURCES

National Payroll Institute

Government Links (payroll.ca → Resources → Government Links)

Payroll Guidelines (payroll.ca → Resources → Payroll Guidelines) (member login required)

Human Rights

Canadian Human Rights Commission (links to provincial Human Rights Commissions/ Coalitions can also be accessed from this site)

Service Canada

How to Complete the Record of Employment Form

Canada Revenue Agency guides, forms and information

- RC4110—Employee or Self-Employed?
- Specific Employments
- S1-F2-C3 : Scholarships, Research Grants and Other Education Assistance
- T4001—Employers' Guide – Payroll Deductions and Remittances
- RC4120—Employers' Guide – Filing the T4 Slip and Summary
- CPT1—Request for a Ruling as to the Status of a Worker under the Canada Pension Plan and or the *Employment Insurance Act*
- Penalties, interest, and other consequences
- IC89-2—Directors' Liability

Revenu Québec guides, forms and information

- *Civil Code of Québec*
- RR-65.A-V—Questionnaire to Determine the Status of an Employee or a Self-Employed Person
- IN-301-V—Employee or Self-Employed Person?
- RR-65-V—Application for Determination of Status as an Employee or a Self-Employed Person
- TP-1015.G-V—Guide for Employers: Source Deductions and Contributions
- RL-1.G-V—Guide to Filing the RL-1 Slip: Employment and Other Income
- Penalties

Human Resources and skills development canada

- Determining the Employer/Employee Relationship
- Questionnaire for the Payer
- Questionnaire for the Worker

Court Cases

- *Royal Winnipeg Ballet v. M.N.R. (F.C.A.), 2006 FCA 87, [2007] 1 F.C.R. 35*
- *Braiden v. La-Z-Boy Canada Limited*
- *McKee v. Reid's Heritage Homes Ltd.*

CSST (Quebec)

- Explanatory Guide

Manitoba Health And Post Secondary Education Tax

- Bulletin No. HE001—Information for Employers

Northwest Territories Payroll Tax FORMS

- Employer Guide

Nunavut Payroll Tax

- Employer Guide

Ontario Employer Health Tax

- Penalties and Fines

APPENDIX 1 – SAMPLE EMPLOYMENT AGREEMENT

[Enter Date]

[Enter Name]
[Enter Address]

Dear [Enter First Name]:

Re: Offer of Employment

On behalf of [Enter Organization], we are very pleased to offer you employment as a [Enter Position], effective [Enter Date]. This offer and the related documentation contain important information related to your employment. Please read these documents very carefully and confirm your understanding and agreement by signing the last page. A copy for your records is also included.

Reporting Relationship / Job Description
This position reports directly to [Enter Manager Name, Department] and your primary responsibilities are outlined in the attached Position Description, which we discussed during the interview. Please keep in mind that as business expectations change, the accountabilities of this role may be revised as necessary.

Your hours of work will be 7.50 hours per day, Monday to Friday, from 8:30 am to 5:00 pm, for a total of 37.50 hours a week. You may also be required to work additional hours to meet deadlines or complete projects.

Compensation
Your annual base salary will be [Enter $00,000] per year, paid bi-weekly, via direct deposit. In addition, you are entitled to the following benefits that constitute your total compensation package.

Annual Performance Incentive
You are eligible to participate in our Annual Performance Incentive.

Benefits & RRSP Program
You will receive statutory government benefit coverage and will be eligible for a comprehensive benefits package after three months of employment.

You will also be eligible to participate in the Group Registered Retirement Savings Program (RRSP) upon the successful completion of the probationary period.

Vacation & Holidays
Your annual vacation will be [Enter vacation days (number)] days.

Vacation scheduling is to be coordinated and approved, in advance, through your Manager.

In addition to [Enter amount, nine (9)] statutory holidays, [Enter Organization] also provides its employees with the Civic Holiday in August; provincially legislated holidays will be recognized for employees in the applicable provinces.

Probationary Period
Your first three (3) months of employment is a probationary period. This probationary period may be extended at the discretion of [Enter Organization]. A review of your performance will be conducted before the completion of three months following the commencement of employment.

Acknowledgement
This offer supersedes any and all prior agreements and all written or verbal communications between you and [Enter Organization] and constitutes the entire agreement between us. If this offer is acceptable to you, please sign and return the enclosed copy to my attention.

[Enter Employee Name], we are very pleased with your interest in joining our team and we are confident you will find your role both personally and professionally rewarding.

We look forward to your positive response. Please feel welcome to contact me if you have any questions.

Yours very truly,

[Enter Organization]

PER:

_____ _____
[Enter Managers Name] Date
Manager, [Enter Department]

Attached:
- [Enter Position Name], Position Description

I have been given a copy of this letter and have read and understood its terms. I hereby accept the terms and conditions of employment outlined above.

_____ _____
[Enter Employee Name] Date

APPENDIX 2 – SAMPLE INDEPENDENT CONTRACTOR AGREEMENT

Independent Consultant's
Contract for Services Agreement

This **CONTRACT FOR SERVICES AGREEMENT** made on the ___ day of [month], 2___ (the "**Agreement**").

BETWEEN:

[Enter **NAME OF CONSULTANT]** (the "**Consultant**")
A [Enter Chartered Accountant /Certified General Accountant] residing at [INSERT ADDRESS]
or:
A professional corporation with an office at [INSERT ADDRESS]

AND:

[Enter ABC Organization ("ABC")]
A limited liability partnership carrying on the practice of chartered accountancy, audit, taxation and advisory services with an office located at [INSERT LOCAL OFFICE ADDRESS]

The Consultant and ABC shall collectively be described hereinafter as the "**Parties**".

WHEREAS the Consultant provides accounting services and is not considered to be an employee of ABC; and

WHEREAS ABC wishes to retain the Consultant and the Consultant has agreed to accept this appointment as a consultant to ABC upon the terms and conditions hereinafter set forth:

1. Services
The Consultant is hereby appointed as and shall hold the office of "Consultant" to ABC effective [INSERT STARTING DATE], and shall conduct consulting services (the "**Services**") for ABC as follows:

(a) The Consultant shall use his/her/their best efforts to promote the interests and welfare of ABC throughout the Term (as defined in Section 2).

(b) Throughout the Term, the Consultant shall represent himself/herself/themselves to the public as an "Independent Accounting Consultant".

(c) The Consultant shall comply with the policies of ABC with respect to professional independence which requires that the Consultant report to ABC any investments, activities or relationships which could impair, or appear to impair, the independence of ABC.

(d) The Consultant shall refrain from accepting appointments as a director, trustee or executor or accepting any form of employment without advance authorization from ABC. This requirement is not intended to unduly restrict the Consultant's activities outside ABC but to ensure conflicts of interest are avoided.

(e) The Consultant shall deliver the Services to ABC's [TAX/AUDITING] group and the Consultant shall focus on [GIVE A BRIEF DESCRIPTION OF WORK TO BE PERFORMED], as directed by [INSERT NAME OF OVERSEEING PARTNER], Partner, at ABC's [STATE LOCATION] office.

2. Term

This term of this Agreement shall be in effect from [Enter DATE to DATE], (the "**Term**") subject to the Parties' agreement in writing to renewal, and subject to termination provisions set out below.

3. Termination

ABC's Office Managing Partner may terminate the appointment of the Consultant upon the occurrence of any of the following events:

(a) by giving the Consultant seven (7) days written notice;

(b) the Consultant's services fail to meet ABC's standards as determined at the sole discretion of the Managing Partner;

(c) the Consultant breaches any material term, condition or provision of this Agreement;

(d) the Consultant is no longer authorized or licensed to practice professionally; or

(e) the expiration of the Term of this Consulting Agreement as set out in Section 2.0.

4. Relationship of the Parties

4.01 The Consultant is being retained to provide Services as an independent consultant. The Consultant is not retained as an employee of ABC. Accordingly, the Consultant may perform the Services at any location, including the ABC job site, and during any periods that she/he/they deem appropriate to fulfill his/her/their obligations under this Agreement. The Consultant shall be responsible for any tools and equipment required to perform the Services. Nothing contained in this Agreement shall be deemed or construed to create an employer/employee relationship or any partnership or joint venture between the Consultant and ABC.

4.02 Neither Party has any right under this Agreement to act as an agent for the other or to bind the other to any other person, firm or corporation, except with the express written consent of the other if necessary to carry out the purpose and intent of this Agreement.

4.03 ABC has no obligation to provide any health, dental or other benefits to the Consultant.

4.04 The Consultant shall be available on a full time basis or as required by the ABC [STATE LOCATION] office.

5. Fees and Expenses

5.01 ABC shall pay to the Consultant $ [Enter AMOUNT] per hour for all pre-approved, chargeable, billable hours for Services rendered.

5.02 In no event shall ABC be required to pay for Services or expenses which have not been approved in advance by [Enter PARTNER NAME]. The Consultant is exclusively liable and responsible for all unapproved expenses and costs incurred in connection with the performance of the Services under this Agreement.

5.03 The Consultant shall submit monthly invoices to the attention of [Enter PARTNER NAME] at ABC. ABC agrees to pay all invoices within fifteen (15) days of receipt. The invoices shall sufficiently detail the following:

(a) the Consultant's tax registration number, if applicable;

(b) the day on which the Services were performed;

(c) the client or customer for which the Services were performed;

(d) any applicable taxes charged on the hourly fee;

(e) all pre-approved administration and business travel expenses, including receipts, billed as a separate line; and

(f) the specific purpose of the expenses incurred.

5.04 The Parties agree that "**Business Travel**" means travel beyond the outer limits of the [Enter CITY OR TOWN] of [Enter STATE CITY'S NAME] in which ABC's office is located.

5.05 The Parties agree that "**Travel Expenses**" means the costs of business travel, meals, lodging and other expenses directly related to Business Travel. This includes:

(a) airfare for Business Travel in economy class at the lowest available fare;

(b) taxi fares, only when there is no less expensive alternative;

(c) mileage for use of Consultant's personal vehicle, when less expensive transportation is not available (reimbursement shall be at the rate of $[Enter CRA or organizational rate] per kilometre, including GST);

(d) the cost of standard accommodations in moderately priced hotels, motels or similar lodgings;

(e) the cost of meals, no more lavish than would be eaten at the Consultant's own expense;

(f) tips not exceeding 15% of the total cost of a meal or 10% of taxi fare; and

(g) charges for telephone calls, fax and similar services required for business purposes.

5.06 The Parties agree that the Consultant is not entitled to any additional payment beyond compensation for pre-approved chargeable, billable hours and pre-approved administration, and reimbursement for travel expenses, which are invoiced to ABC in the manner described above.

6. Insurance

The Consultant is solely responsible for and agrees to maintain at least the minimum insurance coverage as required by law, where applicable. The Consultant shall provide ABC with proof of such coverage upon request by ABC.

7. Withholdings, Deductions and Taxes

ABC shall not take any withholdings or deductions from the fees payable to the Consultant. The Consultant is solely responsible for any payment or remittance of any statutory deductions or withholdings payable to Canada Revenue Agency or any amounts owing to any other governmental authority in respect of this Agreement including, without limitation, GST, income taxes, employer health taxes, workers' compensation payments, employment insurance contributions, Canada Pension Plan contributions and any other taxes, amounts or expenses.

8. Ownership of the Materials

8.01 The Consultant agrees to assign all rights (including copyright, patent, trademark and all other proprietary rights) to materials, inventions, discoveries, intellectual property, ideas, innovations, developments, improvements, and all processes relating directly and exclusively to the operations or business of ABC made by the Consultant, or in conjunction with others, during the Term of this Agreement.

8.02 The Consultant agrees that at any time during the Term of this Agreement, or after the Agreement ends, ABC may request that the Consultant execute all documents necessary for the filing of applications for a trade-mark, patent or any other registration, both Canadian and foreign, of the matters referred to in this section.

8.03 The Consultant agrees that he/she/they shall make no claim against ABC with respect to the matters referred to in this section.

8.04 The Consultant retains ownership rights over any pre-existing materials belonging to the Consultant and retains ownership rights over any materials or inventions made by the Consultant that do not relate directly or exclusively to the Services provided to ABC.

9. Confidentiality

9.01 The Consultant shall not disclose either during the Term of this Agreement or any time thereafter, any confidential information or trade secrets of which the Consultant may become aware in the course of this Agreement relating to ABC, its employees or its clients. A violation of this provision shall result in immediate termination of this Agreement. For the purposes of this Agreement, confidential information includes, in whole or in part, information of ABC, its agents, employees, officers, directors, shareholders and clients:

(i) of a technical nature such as, but not limited to, the methods, know-how, processes, ideas, improvements, inventions, computer programmes, software, systems documentation, special hardware, software development and similar items; (ii) of a business nature such as, but not limited to, audit techniques, tax planning techniques, financing techniques, and information about clients and prospective clients; and (iii) pertaining to future developments such as, but not limited to, future marketing.

9.02 The Parties agree that the Consultant may make appropriate use of the confidential information during the performance of his/her/their Services, the nature and extent of such use to be at the Consultant's discretion, acting reasonably. The Consultant agrees not to use any confidential information for any purpose other than in the faithful performance of the Services.

9.03 At any time during this Agreement, and upon expiry or termination of this Agreement, the Consultant shall promptly return all property and confidential information belonging to ABC.

9.04 The Consultant shall not retain any copies of the confidential information without ABC's prior written permission.

10. Non-Disclosure

10.01 The Consultant agrees that during the Term of this Agreement, or any time after the Agreement ends, she/he/they shall not disclose any confidential information except as required by law. In the event that the Consultant violates this provision during the Term of the Agreement, ABC may terminate this Agreement without notice. This provision shall survive the termination of this Agreement.

10.02 The Consultant agrees that any disclosure of the confidential information contrary to the terms of this Agreement shall be highly detrimental to ABC. The Consultant agrees to indemnify ABC from any and all claims, demands, damages, losses, costs and expenses (including, without limitation, legal fees and disbursements incurred in connection with any and all appeals) incurred by ABC as a result of the Consultant's disclosure of any confidential information contrary to the provisions of this Agreement.

10.03 The Consultant further agrees that she/he/they shall not disclose the terms of this Agreement to any person without the prior written consent of ABC and shall at all times preserve the confidential nature of his/her/their relationship to ABC and the Services hereunder.

11. Conflict of Interest

The Consultant acknowledges that she/he/they enter into this Agreement freely and that this Agreement does not violate the terms of any other agreement that may exist between the Consultant and any third party.

12. Non-Solicitation

12.01 During the term of this Agreement and for a period of twelve months following the expiry of the Agreement, the Consultant shall not:

(a) interfere in any manner with the relationship between ABC and its customers;

(b) solicit ABC's customers in connection with any products or services of the type then being provided by ABC to its customers, or any similar or related products or services;

(c) interfere in any manner with the relationship between ABC and its employees; or

(d) solicit ABC's employees in connection with employment by any person, firm or corporation other than ABC.

12.02 For the purposes of this section, every person, firm, or corporation who has been supplied by ABC with products or services during the 12 months preceding the date on which this Agreement terminates, shall be deemed to be a customer of ABC.

12.03 The Consultant further agrees:

(a) that all of the restrictions contained in this section are reasonable and valid;

(b) to waive all defences to the strict enforcement of the restrictions contained in this section;

(c) that the Consultant's breach of this section shall result in irreparable harm to ABC and, as a result, ABC may apply for an injunction to restrain any such breach; and

(d) that the provisions of this section are in addition to, and not in substitution for, the Consultant's fiduciary obligations owed to ABC.

12.04 In the event that the Consultant violates this provision, ABC may terminate this Agreement without notice.

12.05 In the event that the Consultant, whether directly or indirectly in any manner whatsoever, or any financial services or public accounting firm with which the Consultant become associated, perform professional Services for "ABC Clients" or accept employment with a(n) ABC Client causing ABC to withdraw its engagement due to independence rules, then within a one (1) year period following termination of this Agreement or any renewal thereof, the Consultant shall forthwith pay to ABC, as compensation, in the form of liquidated damages, an amount equal to one hundred percent (100%) of the total charges applicable to that client by ABC for the client's last complete fiscal year ending before the termination of this Agreement.

13. Limitation of Liability

Under no circumstances shall ABC be liable to the Consultant for any losses or damages of any kind, by reason of any act or omission by the Consultant in the performance of the Services.

14. Indemnification

The Consultant agrees to indemnify, hold harmless and defend ABC and its employees against all claims, liabilities, losses, expenses, fines, penalties, taxes or damages (collectively "**Liabilities**") asserted by any third party where such Liabilities result from:

(a) the Consultant committing any dishonest, negligent, tortuous, fraudulent or criminal act or omission in the performance of the Services under this Agreement;

(b) the Consultant's breach of any representation or warranty made by the Consultant under this Agreement; or

(c) the Consultant's alleged failure to pay, deduct or remit any amounts owing in respect of this Agreement including, without limitation, GST, income taxes, employer health taxes, workers' compensation payments, employment insurance contributions, Canada Pension Plan contributions and any other taxes, amounts or expenses.

This provision shall survive the termination of this Agreement.

15. Applicable Law

This Contract for Services Agreement is governed and interpreted in accordance with the laws of the province of [Enter STATE PROVINCE WHERE CONTRACT IS TAKING PLACE] and the federal laws of Canada applicable therein, and the Parties hereby submit to the exclusive jurisdiction of the courts of this province.

16. Assignment

The Consultant shall not assign any of his/her/their rights under this Agreement, nor delegate the performance of any of his/her/its Services without the prior written consent of ABC.

17. Notice

Any communication under this Agreement must be in writing and may be delivered personally or sent by email, fax, or prepaid registered mail, addressed as follows unless changed by notice:

To [Enter Organization LLP] at: [Enter OFFICE ADDRESS] Attention: [Enter PARTNER NAME]	To [Enter NAME OF CONSULTANT] at: [Enter CONSULTANT ADDRESS]

Any communication that is delivered or mailed is effective when received. Fax transmissions are effective when the transmission is complete.

18. Entire Agreement

18.01 This Agreement constitutes the entire Agreement between the Consultant and ABC and supersedes any prior understandings or agreement, either written or verbal.

18.02 No amendments to or waivers of any breach of this Agreement shall be binding unless it is in writing and signed by both parties. Unless otherwise specified, a waiver shall be limited to the specific breach waived.

18.03 Any modification to this Agreement must be in writing and signed by the Consultant and ABC.

19. Severability

If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

[Enter **Organization LLP]**		**NAME OF CONSULTANT**	
Signature	_____	Signature	_____
Name	_____	Name	_____
Title	_____	Title	_____
Date	_____	Date	_____

APPENDIX 3 – CREATING AN INDEPENDENT CONTRACTOR AGREEMENT

The following is an extract from the article, "*Independent Contractors*" reproduced below with the permission of the author, Maureen Currie from Currie Law Professional Corporation. Ms. Currie can be reached at **www.currielaw.ca**.

DOs

If you make the decision that you want to attempt to create an independent contractor agreement, you should:

- Require the contractor to submit bills for services (as opposed to providing the contractor with a guaranteed sum or fixed retainer)
- Permit the contractor to hire employees and sub-contractors if necessary;
- Include an express termination provision in the agreement;
- Provide obvious and sufficient consideration for entering into an independent contractual relationship;
- Clearly sever a prior employment relationship before entering into a contractual relationship with that individual. If at all possible, allow a period of time to run between the end of the employment relationship and the beginning of the contractor relationship;
- Ensure that the contract is for a definite term or task. Bear in mind that indefinite term contracts are more common in employment relationships;
- Clearly state in the contract that it is an independent contractor relationship and not an employment relationship;
- Obtain an express acknowledgement from the contractor that the company will not be deducting or remitting any amounts for statutory obligations from the contractor's fees;
- Obtain an indemnity from the contractor for any taxes the company is required to repay the CRA in connection with the contract;
- Clearly state that the contractor does not have the authority to enter into contracts on behalf of the company, or bind the company in any other way, without its express written authority;
- State that the contractor is free to provide his or her services to others. Any limitation in this area, including a requirement that the individual pre-screen potential clients with the company, will be evidence of an employment relationship or at the very least, of a dependent contractor arrangement – which doesn't protect you;
- Require the contractor to obtain a G.S.T. number and to charge and remit G.S.T.; and
- Require the contractor to provide proof of Workers' Compensation coverage or insurance in lieu of that coverage.

YOUR COMPANY SHOULD NOT:

- Exert control over the contractor's hours of work, vacation time or the manner of performing his or her duties;
- Allow the contractor to use company stationery or business cards;
- Supply the contractor with a permanent work station or office. If the individual must be provided with work space, consider charging the individual rent for this space;
- Allow the contractor to use company equipment or company employees as assistance. Telecommuters should pay their own computer and office equipment including software, fax machines and telephones;
- Require the contractor to comply with company policies and discipline procedures. The company can require all companies which it contracts to comply with its harassment policies as they relate to their interactions with the company's employees and customers;
- Set quotas for the contractor or prohibit the contractor from soliciting his or her own clients;
- Provide the contractor with T-4 slips;
- Subject the contractor to company supervision or performance reviews;
- Refer to the contractor as an employee or member of the "team" to provide him or her with a title (either internally or externally);
- Set commission scales or salaries for contractors. Instead, an hourly, daily or project rate should be negotiated with the contractor;
- Label as an "independent contractor" a commissioned salesperson who receives the majority or all of his or her income from the sales of the company's products, unless factors support such a designation;
- Insert a non-competition clause into the contract, unless absolutely necessary for the company's protection. Non-solicitation and confidentiality clauses are less indicative of an employment relationship;
- Restrict the number and/or types of clients to whom the contractor may provide services or require pre-screening of the contractor's clients; and
- If the contractor is with a company as opposed to a specific individual, stipulate which employee of that company must provide the services.

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Lucy Zambon, CPM



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