



## Employee or Self-Employed; Misidentifying a Worker Could Cost You HUGE!

Be warned! The CRA is cracking down on employers who misclassify their workers to avoid paying source deductions! Now, I'm not saying that any of *my* clients would purposely misclassify their workers, but if you hire contract workers, consultants, or freelance talent, you need to be sure the CRA doesn't consider them employees by their standards. If they do, your mistake in classification could be expensive.

So, how do you determine if someone doing work for you is an employee or an independent contractor? Because every business and each circumstance is different, the answer is not as cut and dried as you might like. Instead, the CRA uses court precedents, common law, and a balance of probability to arrive at a determination. Before the status of a worker under your umbrella comes under CRA scrutiny, make sure you always request a *written* ruling!

### The litmus test

The four standard tests the CRA will use to determine the status of a worker relate to *tools, control, integration, and risk vs. reward*. With those factors in mind, they will ask the following questions:

- How much control do you have over the worker's activities?
- Do you provide the tools and equipment, or does the worker?
- Can the worker subcontract the work or hire assistants?
- What is the degree of financial risk the worker takes?
- What degree of responsibility for investment and management does the worker hold?
- What is the worker's opportunity for profit?
- What other factors come into play (such as written contracts)?

The chart below, courtesy of Employment and Social Development Canada, compares characteristics of the relationship between worker and payer to help you determine their classification by the CRA.

Employee ←	Worker	→ Independent Contractor
<b>Characteristics</b>		<b>Characteristics</b>
✓ 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 payers benefit 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 predetermined basis
✓ Reports to payer's workplace on regular basis		✓ Submits invoice to Payer for payment
		✓ Worker may accept or reject work

For more  
more  
explanation,

info and a  
detailed  
use this link:

[account/request-a-cpp-ei-ruling.html](http://account/request-a-cpp-ei-ruling.html). If your worker doesn't fit neatly on one side or the other or, more likely, they fit categories of both an employee and an independent contractor then, according to the Feds, the classification "becomes complicated".—IPG-649 Helpful, right? Don't worry. If your situation is that muddy, then we should sit down and go over it so I can help you navigate these particular waters.

The relationship you have with a worker may morph over time and what started as a contract position may have slipped dangerously close to what the CRA would consider an employee/employer association. Make sure that the nature of the agreement doesn't change and that the actual role and responsibilities of the worker remain the same according to the written contract.

## **Consequences**

According to Bill 148, it's up to the business to prove that an independent contractor is not, in fact, an employee of the company. That's not easy when you don't have access to the contractor's books to say, prove that they have more clients than just you. So let's say the CRA orders a written ruling during a payroll trust exam or due to a complaint by a worker, and you can't prove that the independent contractor you use is not an employee. The CRA could require that the business pay the EI and CPP for *both* the employee and the employer portions not only for that year but for previous years as well. With the inevitable penalties and interest that would most certainly apply, you'd be looking at shelling out some serious pesos.

But wait; there's more! The contractor, newly dubbed 'employee,' can now make a retroactive claim for all of their rightful benefits including vacation pay, overtime, guaranteed minimum wage, severance, and so on. Do you hear that faint sound cha-chinging like a cash register? That's your bottom line—or *was* your bottom line.

Employing independent contractors, consultants, or the like can be good for business and can save you on employee expenses, but make *sure* you can prove that they are not employees or you'll likely wish you'd gone a different route.