

Employees or Independent Contractors?

One of the questions that business operators frequently ask is: “Should I hire this person as an employee or an independent contractor?” Certainly, with the high cost of employee benefits, complicated payroll rules and changes to the Employment Standards Act many businesses are encouraging their hired labour to become independent contractors.

You can see the benefit of hiring contractors just by looking at the numbers. The cost of hiring an employee can often exceed 20 percent of the employee’s gross wage when taking into account the employees portion of EI and CPP, workers' compensation, holiday and stat pay, not to mention the numerous other benefits that may be in place with your company.

Assuming the gross pay to be the same under either relationship, then the only additional cost of hiring an independent contract may be the GST he or she may have to levy on their services, which may be recovered if you are a GST registrant.

In recent court cases, employment relationships were found to be based on the following criteria:

The degree of control the employer has over the day to day functions of the worker.

The degree to which the worker is required to supply their own tools and equipment on a regular basis.

The degree to which the worker is required to bear risk associated with their income and personal assets.

If you wish to hire someone on a contract basis, it is important to ensure that your relationship with them is not one of an employer/employee in order to avoid the serious penalties of not withholding and remitting payroll source deductions. Canada Customs and Revenue Agency have been known to go back as many as three years and assess a company the employee's and employer's portions of unremitted CPP and EI deductions.

In light of this and the criteria found in recent court cases, it is important to have a bona fide independent contractor agreement prepared with all the supporting facts. For example, you want to clarify which party is responsible for Workers' Compensation Board coverage. As well, you may want the contractor to commit to pay any EI and CPP premiums should Canada Customs and Revenue Agency reassess them as an employee.

It is also important to ensure that contractors take the necessary steps to show they are independent in all respects. Many of these steps involve structuring their activities in a business-like manner, such as:

1. Establishing a bona fide office for the business and register the business with the applicable provincial body.

2. Advertising the services being provided in local newspapers, yellow pages, flyers and trade magazines.
3. Having appropriate letterhead and business cards printed.
4. Establishing a separate business telephone number and listing.
5. Not receiving any employment-related benefits from the company he or she is contracting with.
6. Earning revenues from other sources.
7. Using their own equipment and supplies, and providing their own space and secretarial staff, or paying rent or fees to others to provide space and secretarial staff.
8. Submitting invoices for work done.
9. Obtaining a GST number.
10. Paying Workers' Compensation Board premiums.

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