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Defining the Relationship: Employee or Self-Employed?

Whether you are a worker looking for an opportunity to provide your services, or a business owner looking for skilled staff, the nature of the working relationship must be considered for many reasons. This article is intended to provide you with some guidance in determining whether an employment or contractor (self-employed) relationship exists, and to describe the implications of making an incorrect assessment.

When Does an Employer-Employee Relationship Exist?

An employer-employee relationship would generally be considered to exist in circumstances where the *employer* meets the following conditions:

- controls when, where, and how the work is done;
- determines the amount of salary/wages;
- sets the hours of work;
- supervises the activities; and
- provides the tools required to do the job.

If an employment relationship does exist, certain complexities are generally involved. An employer is required to withhold Canada Pension Plan (CPP) payments, Employment Insurance (EI), and income tax from the wages paid and remit those withholdings to Canada Customs & Revenue Agency (CCRA) on a regular basis. The employer must also contribute to the CPP and EI on behalf of the employee, provide vacation entitlements,

comply with governing employment standards with regard to overtime and statutory holiday pay, and issue a T4 to the employee on an annual basis.

For a small business, in particular, this may sound like a lot of administration. There may, however, be little option to avoid it! It is, unfortunately, not a question of *choosing* the relationship you wish to apply, but one that is determined by an *assessment of the facts*.

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When Does a Self-Employment Relationship Exist?

A worker is generally considered to be self-employed where the *worker*:

- controls when, where, and how the work is done;
- controls the opportunity for profit or bears the risk of loss;
- provides his or her own tools or equipment to do the job; and
- integrates the employer's activities into his or her own business activities.

A self-employed individual is not entitled to receive vacation or statutory holiday pay, and may be required to register for GST. The individual is not

entitled to contribute to the EI system, and accordingly, cannot claim EI benefits if out of work. Further, as deductions are generally not taken from income paid to the worker, the self-employed person must calculate CPP and remit it each year when filing his or her personal income tax return. A self-employed worker is also able to deduct expenses incurred to earn business income.

The Answer Is Not Always Clear . . .

Each employment situation is unique and must be examined based upon its own facts, and in its own context. Certain circumstances will be very difficult to assess because some, but not all, criteria may be met. To make the determination of employee or self-employed, you must analyze the terms and conditions of the worker's employment as they relate to the four factors indicated below.

Employee or Self-Employed? Four Factors to Consider

	PAYER	WORKER
1. Who controls where/when/how?	<input type="checkbox"/>	<input type="checkbox"/>
2. Who owns/provides the tools?	<input type="checkbox"/>	<input type="checkbox"/>
3. Who bears chance of profit/risk of loss?	<input type="checkbox"/>	<input type="checkbox"/>
4. Is the work integrated into other activities?	N/A	Y/N

The test of “control” refers to who controls the way the work is done and the methods used. Control by an employer can also exist when the right to control is evident, whether or not it is exercised.

The test of “ownership” considers who owns, provides, and maintains tools or equipment required to do the work. While some vocations routinely require the employee to provide a basic “tool kit,” that would not necessarily imply a contract relationship. Generally, however, where large tools or equipment must be provided by the worker, it may be more indicative of self-employment.

The test that addresses the “chance of profit/risk of loss” considers the degree to which the worker can influence his or her financial outcome, by more than simply the number of hours worked. For example, does the worker have an opportunity to make a profit? Does he or she bear the risk of loss, i.e., by realizing bad debts or unexpected expenses? If so, the worker may be self-employed.

The final test of “integration” is applied only from the perspective of the worker, and considers whether the worker integrates the payer’s activities to his own commercial activities. If so, a contract or business relationship would likely exist.

The Risk of Error

No single factor can define an employment relationship, and while it is the responsibility of the *employer* to determine the nature of the relationship, *both* the employer and worker could face serious consequences if an incorrect determination is made. For example, an employer who fails to collect and remit CPP and EI from an employee’s wages can later be assessed both the employee *and* the employer portions of the CPP and EI, as well as face penalties and interest for such failure.

A worker, on the other hand, who has reported earnings as income from self-employment, but is later determined by CCRA to be an employee, could face

the following risks: the deductions that had previously been claimed against that income could be denied by CCRA, resulting in additional taxes, penalties, and interest owing.

When the Answer is Not Clear . . . is More Guidance Available?

Yes, CCRA has provided various forms of guidance to assist employers and workers in determining the status of their relationship. In particular, CCRA’s publication *Employee or Self-Employed?* provides a series of checklists you may complete to assist in this determination. This publication can be found on CCRA’s Website at www.ccr-aadrc.gc.ca/E/pub/tg/rc4110. You may call their office to make general enquiries in this regard at 604 669-4715. Ask for “CPP/EI Rulings.” ▲

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