



"The employee versus the independent contractor?" is a question often asked by both the person seeking the services and the person offering them. The question generates a significant amount of litigation because there is no cut and dry definition.

Advantages of Engaging the Services of an Independent Contractor Include the Following:

- ✓ No need to pay employer's share of CPP
- ✓ No need to pay employer's share of EI
- ✓ No need to pay vacations
- ✓ No need to pay statutory holidays
- ✓ No need to pay severance payments

These can easily add up to a 15% savings.



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EMPLOYEE VERSUS INDEPENDENT CONTRACTOR



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There are also advantages for the individual offering the service to be established as an "independent contractor". These include the following:

- ✓ A wide range of business-related deductions are opened up, including home-office, promotional, entertainment, capital cost allowance on equipment, and so on.
- ✓ Although it is possible for an employee to deduct amounts paid to an "assistant", practically speaking, it may be easier to income-split with family members in an independent-contractor situation; e.g., by paying (reasonable) fees/salaries to family members.
- ✓ It may also be possible to incorporate and claim the low tax rate applicable to active corporations, which is less than 12% in Manitoba.

As a matter of law, Canada Revenue Agency must judge every case from the point of view of the person offering services (i.e., the potential employee and not the employer), and must "search for the total relationship of the parties".

Is the person performing these services a person in business on his own account? If the answer is yes, the person is self-employed.



To help you determine your relationship, here are some guidelines:

Factors Indicating an Independent Contractor Status

- ✓ Worker has complete control of hours of work and works without supervision
- ✓ Ownership of tools and equipment by the worker
- ✓ Worker provides services to more than one business
- ✓ A contract indicating a hirer/independent contractor relationship
- ✓ Submission of an invoice by the worker to the hirer for services rendered
- ✓ Worker charges GST/provincial PST
- ✓ Worker has a risk of loss from his enterprise
- ✓ No payment to the worker if no services performed
- ✓ Payment by the worker for expenses incurred by the worker in the performance of his or her work, such as paying rent for the use of office space and equipment
- ✓ Worker is not required to perform the services personally – he or she may subcontract to a third party
- ✓ Contract for a limited period of time or a specific project

Factors Indicating an Employee Status

- ✓ Worker works exclusively for a particular hirer
- ✓ Payment of expenses by hirer
- ✓ Payment of a salary or hourly wage as opposed to pay based on services rendered
- ✓ Control and supervision of worker's duties done by hirer
- ✓ Hirer sets working hours
- ✓ Hirer provides worker with all tools and equipment
- ✓ Worker is not required to pay any expenses in relation to the work done/services performed
- ✓ Integration (i.e., Is the worker indispensable to the hired?)
- ✓ Provision of a pension or retirement savings plan
- ✓ Provision of group benefits to worker including life insurance coverage, extended health and dental benefits, and long-term liability

