

Independent contractor



Things to know

- Employers should only enter into independent contractor relationships if the facts of the working relationship support this designation
- Misclassifying someone as an independent contractor can result in significant liability for the company
- A mere statement in a written contract that an individual is an independent contractor is not sufficient
- The determination of whether an individual is an employee or an independent contractor depends on common law principles and the particular facts of each situation – there is no bright line test
- Among the factors that may be considered when determining whether an employer/employee relationship exists are:
 - Whether or not the individual exclusively provided services to the company;
 - The degree of control the company had over the individual's work (including where, when and how to perform the work under the contract);
 - Whether the individual was required to supply their own tools and equipment;
 - The degree of risk taken by the individual (e.g. their chances for profit and risk of loss); and
 - The degree of integration between the individual's activities and the company's business.
- Potential exposure for misclassifying someone as independent contractor includes:
 - (i) liability for unpaid wages and payroll taxes along with interest and penalties for failing to deduct and remit income tax and premiums pursuant to employment standards legislation; [Income Tax Act](#); [Employment Insurance Act](#) and [Canada Pension Plan](#);
 - (ii) if the company terminates the engagement, a claim for reasonable notice or pay in lieu thereof at common law (which generally ranges from 3-24 months' pay depending on the circumstances); and
 - (iii) other penalties in respect of the company's failure to comply with employment standards legislation

USEFUL RESOURCES

Government of Canada

- [Employee or Self-employed?](#)

Government of Ontario

- [Employee Status](#)

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- [Employment law 101: Managing risks and liabilities](#) (Webinar)

Things to do

- When considering retaining someone as an independent contractor ask yourself: is the worker going to be in business for themselves (i.e. “independent”), or are they going to be under the company’s control (i.e. dependent and similar to an employee)?
- If you hire someone as an independent contractor, ensure that the facts of the working relationship support this designation
- Carefully draft independent contractor agreements with legal counsel to reduce misclassification risk

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