



Employee or Contractor?

The difference between an employee relationship and a contractor relationship is not always black and white. There can be very serious consequences (penalties, unpaid tax, CPP/EI premiums, etc) if the Canada Revenue Agency assesses the relationship and determines that you have an employment relationship, when you've been paying as contractors.

There are company benefits to hiring independent contractors, rather than hiring employees. Hiring a contractor can be less expensive, as contractors have to pay their own CPP and the company doesn't have to worry about monthly source remittance and payroll compliance. In the contractors' perspective, there is a large benefit in having their own tax deductions.

The CRA uses the following test to determine if a person is an employee or self-employed individual.

Step 1: Contract of service versus Contract for service?

What was the intent when the two parties entered into the working arrangement? How was the relationship defined and why was it defined as such?

The CRA will also examine the total relationship between the worker and payer and consider all of these factors in Step 2.

Step 2: Factors to consider

- **Control** – the level of control the payer has over the worker's activities. For example, if the payer directs, scrutinizes, and controls many elements of how/when work is performed, it is indication of an employee relationship.
- **Tools & equipment** – does the worker own and provide tools and equipment to accomplish work? For example, if the worker makes significant investment in equipment and worker retains right over the use of these assets, this is indication of a self-employed individual.
- **Subcontracting work or hiring assistants** – can the worker subcontract? For example, if the worker cannot hire helpers/assistants, this is an indicator that they are an employee.
- **Financial risk** – how much financial risk does the worker take? Are there fixed/ongoing costs incurred by the worker that are not reimbursed? For example, if the worker performs a lot of work from their own workspace and incurs related expenses, this is indication of a contractor.
- **Responsibility for investment and management** – a significant investment is evidence of a business relationship.
- **Opportunity for profit** – can the worker realize a profit or loss? Employees normally do not have chance of profit and risk of loss even though their compensation can vary depending on terms of employment contracts.

In summary, the final determination of whether a person is an independent contractor or an employee will depend on the specific facts and circumstances of each case. Please contact us at info@lionsfg.com for further information if you are still uncertain of your position. Guidance from the CRA can also be found here: <http://www.cra-arc.gc.ca/E/pub/tg/rc4110/>