

## EMPLOYEE OR SELF-EMPLOYED?

### HOW TO DETERMINE A WORKER'S EMPLOYMENT STATUS

To determine if a worker is an employee or self-employed, examine the relationship between the worker and the payer by considering the factors included below.

To help make a determination, we give an explanation for each factor and show some indicators that the worker may be an employee or a self-employed individual.

The importance of each factor depends on the circumstances of each situation. All factors must be considered in the context of the relationship as a whole. The objective is to determine the nature of the overall relationship between the worker and the payer.

#### 1. Control

Control is the ability, authority, or right of a payer to exercise control over a worker concerning the manner in which the work is done and what work will be done.

##### A) Indicators that the worker is an employee:

- The relationship is one of subordination. The payer will often direct, scrutinize, and effectively control many elements of how the work is performed.
- The payer controls the worker with respect to both the results of the work and the method used to do the work.
- The payer determines and controls the method and amount of pay. Salary negotiations may still take place in an employer-employee relationship.
- The worker requires permission to work for other payers while working for the payer.
- Where the schedule is irregular, priority on the worker's time is an indication of control over the worker.
- The payer determines what jobs the worker will do.
- The worker receives training or direction from the payer on how to do the work. The overall work environment between the worker and the payer is one of subordination.
- The payer chooses to listen to the worker's suggestion but has final word.

#### TABLE OF CONTENTS

#### CHAPTER SEVEN

#### EMPLOYEE OR SELF-EMPLOYED

- How To Determine Employment Status
- Responsibilities

B) Indictors that the worker is self-employed individual:

- A self-employed individual usually works independently within a defined framework.
- The worker does not have anyone overseeing them or watching their every move.
- The worker is usually free to work when and for whom he or she chooses and may provide his or her services to different payers at the same time.
- The worker has the ability to accept or refuse work from the payer.
- The working relationship between the payer and the worker does not present a degree of continuity, loyalty, security, subordination, or integration, all of which are generally associated with an employer-employee relationship.

**2. Tools and Equipment**

Consider if the worker owns and provides tools and equipment to accomplish the work.

Self-employed individuals often supply the tools and equipment required to complete a contract. As a result, the ownership of tools and equipment by a worker is more commonly associated with a business relationship.

However, employees can also be required to provide their own tools. The courts have acknowledged that a worker being required to provide their own tools of the trade does not, by itself, place that worker in the status of a self-employed individual.

A) Indicators that the worker is an employee:

- The payer supplies most of the tools and equipment required by the worker. In addition, the payer is responsible for repair, maintenance, and insurance costs.
- The worker supplies the tools and equipment and the payer reimburses the worker for their use.
- The payer retains the right of use over the tools and equipment provided to the worker.

B) Indicators that the worker is a self-employed individual:

- The worker provides the tools and equipment required for the work. In addition, the worker is responsible for the costs of repairs, insurance, and maintenance to the tools and equipment.
- The worker has significant investment in the tools and equipment and the worker retains the right over the use of these assets.
- The worker supplies his or her own workspace and is responsible for the costs to maintain it, and performs substantial work from the site.

**3. Chance of Profit/Risk Loss**

Generally, in an employer-employee relationship, the employer alone assumes the risk of loss. The employer also generally covers operating costs, which may include office expenses, employee wages and benefits, insurance premiums, delivery and shipping costs. The employee does not assume any financial risks, and is entitled to his full salary or wages regardless of the financial health of the business.

In a business relationship, the self-employed individual may make a profit or incur a loss. He also covers operating costs. There is no guarantee of a steady income because a self-employed individual's income depends on the results achieved by the end of the contract.

**RESPONSIBILITIES**

**Employer-Employee Relationship**

Where an employer-employee relation exists, the employer must:

- Register for a Revenue Canada Business Number (BN);
- Withhold income tax, Canada Pension Plan (CPP) contributions, and Employment Insurance (EI) premiums on amounts paid to the employee;
- Remit the amounts withheld as well as the required employer's share of CPP and EI premiums to Revenue Canada;
- Report the employee's income and deductions on the appropriate information return; and

- Give the employee copies of their T4 slips by **the end of February of the following calendar year.**
- The employer is also responsible for registering with the relevant provincial organizations, i.e. Workers Compensation Board

### **Business Relationship**

Self-employed individual must pay both shares of CPP contributions. They may also have to pay their income tax and CPP contributions in installments. Generally, self-employed individuals are not eligible for EI benefits.

**Refer to**

**[www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)**

**for more information**