

Employee vs. Dependent Contractor vs. Independent Contractor

When hiring, it is critical to accurately identify workers. Despite common intent and/or a written contract between an employer and a worker, the CRA may still rule that the worker is an employee. Incorrectly classifying an employee as a contractor may have serious legal and monetary ramifications. The Chart below is a guide only and does not constitute legal advice. It should be used in conjunction with other resources.

	EMPLOYEE	DEPENDENT CONTRACTOR	INDEPENDENT CONTRACTOR
DEFINITIONS	A person who provides work or services for an employer for wages. Protected by Minimum Standards set out in the ESA	<ul style="list-style-type: none"> A contractor that is economically dependent on their principal Hiring Organization May be entitled to limited protection under the ESA such as termination notice. 	<ul style="list-style-type: none"> Someone in Business on their own account Not entitled to the minimum standards and protections under the ESA

	EMPLOYEE	INDEPENDENT CONTRACTOR
Degree of Control over the worker's activities. I.e. What work is done & in what manner	<ul style="list-style-type: none"> Employer controls the workers activities Employer may choose to listen to the worker's advice Worker is subordinate to the employer Employer chooses and controls the method & amount of pay 	<ul style="list-style-type: none"> Worker has a large degree of control and independence Minimal supervision by the employer Sets out the rate of pay and send out invoices for payment
Who Provides, maintains and insures tools & equipment	<ul style="list-style-type: none"> Employer The Employer provides the workspace for the workers 	<ul style="list-style-type: none"> Worker The worker retains the right over the use of their assets Worker supplies his/her own workspace and does substantial work from there
EMPLOYEE VS INDEPENDENT CONTRACTOR	Can the worker subcontract work or hire assistants?	<ul style="list-style-type: none"> Yes The worker can contract out work or hire his/her own employees
These are not strict & rigid rules, but rather, variables that are collectively considered by the CRA when classifying a worker	Degree of Financial Risk the worker takes	<ul style="list-style-type: none"> Most to All The worker is financially liable if he/she does not fulfil contract obligations The worker does not receive any protection/benefits from the payer
	Workers Opportunities for Profit	<ul style="list-style-type: none"> Chance of profit/risk of losses Has the ability to pursue and accept contracts Can negotiate prices/unilaterally set prices for services and,
Business presence	<ul style="list-style-type: none"> None Worker may need employer consent to work for another employer 	<ul style="list-style-type: none"> Most to All The worker has the right to provide products/services to more than one employer Advertises and Markets his/her services
Other relevant factor eg. written contracts	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> No

What are the consequences to mis-classifying an employee as an independent contractor?	Employer may be required to:	<ul style="list-style-type: none"> Pay both the employer's and employee's share of EI and CPP Pay penalties and interest Pay legal fees and other costs
	Workplace Safety & Insurance	<ul style="list-style-type: none"> If a worker is injured at work and makes a claim under the <i>Workplace Safety and Insurance Act</i> (WSIA) the hiring organization may be held responsible for costs and damages incurred by the injured worker and unpaid WSIB premiums, interest/penalties May be subject to substantial fines
	Wrongful Dismissal Claims	<ul style="list-style-type: none"> Monetary claims in lieu of notices, substantially exceeding the minimum requirements of the ESA Severance Pay

Recommendations & Next Steps	<ul style="list-style-type: none"> Do your research and seek expert advice on hiring & classifying workers Seek independent legal advice and ensure each worker is covered by a contract of employment Assess the position your organization is looking to fill. Can it survive CRA scrutiny? Be sure to ask the intent of the worker – does the worker believe he/she is being hired as an employee or as an independent contractor? Know your rights. Either an employer or worker can request a CRA ruling to determine employment status. CRA rulings must be appealed within 90 days of notification of a ruling.
	<p>More information is available at: https://www.canada.ca/content/dam/cra-arc/formspub/rc4110/rc4110-19e.pdf</p>