

Are You Hiring Independent Contractors or Employees?

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For many employers, hiring staff as independent contractors can seem like a logical way to meet resourcing requirements without the costs and expectations of a long-term commitment that are associated with permanent employees. However, although you may think you've hired a contractor, the CRA may not agree. You may also run afoul of the Alberta Employment Standards Code should the Courts deem your staff to be employees, not contractors. Unfortunately, there can be a heavy financial cost to employers in these circumstances.

In the Alberta Employment Standards Code, an employee is defined as:

“an individual employed to do work who receives or is entitled to wages.”

Often, employers hire contractors but the work they are hired to do falls under this definition of employee. There are several key factors that are considered by the Courts to determine if the worker is an employee or contractor. These include:

- Does the company dictate how, where and when the work should be done?
- Does the company control promotions & discipline?
- Does the company own the tools or equipment used by the worker?
- Does the worker submit an invoice after completing a project or get paid a regular amount at consistent intervals?
- Is the worker in business for himself/herself?
- Does the worker have a chance at profit or a risk of loss?
- Can the worker accept work from other companies or decline work that is assigned?

Why does it matter? Because employees are entitled to vacation pay, overtime and termination

notice or pay in lieu of notice. And, as an employer, you must pay income tax, Employment Insurance and CPP. If CRA determines that your contractor should have been hired as an employee, you may find yourself liable for income tax, Employment Insurance and CPP arrears, interest and penalties. Employers can face further sanctions under the Employment Standards Code if the contractor should have been receiving benefits such as vacation pay and overtime.

Unfortunately there is no simple test that can be used to let employers determine how the relationship will be classified before work begins. All the factors that can determine if the worker is an employee or independent contractor are taken into consideration to determine how the relationship will be labeled.

Employers looking to hire independent contractors can take the precaution of signing a proper contract. Although this isn't a guarantee, it may reduce the chance of receiving an unwelcome visit from CRA. A proper contract should:

- include a 'hold harmless' clause that requires the contractor to take responsibility for all risks associated with performing the tasks described in the contract;
- include a termination clause if the contractor does not satisfactorily fulfill his/her duties. No notice period or pay in lieu of notice should be paid;
- if possible, be made with a contractor who is incorporated.

If you are employing, or are considering hiring independent contractors, the employment lawyers at Duncan Craig LLP can help you assess their status and prevent a future unwelcome ruling and the associated costs.

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