



Independent Contractor vs. Employee

New entrepreneurs are joining our workforce daily. Some are recent graduates wanting to work for themselves; others are individuals taking early retirement packages and realizing a dream of starting their own company or consulting business. Increasingly, there is growing reliance on the services of contractors, casual employees, temporary help, and part-time workers by small and mid-sized companies. These types of non-standard employment arrangements can be beneficial to both the employee as well as the employer, however it is extremely important to clearly define the employment relationship and understand that 'different' employment laws apply to 'employees' and other workers such as 'independent contractors'.

CONTRACTOR	EMPLOYEE
"Contract <i>for services</i> "	"Contract <i>of service</i> "
<i>Employment Standards Act</i> <u>does not</u> apply	<i>Employment Standards Act</i> <u>does</u> apply
<i>Labour Relations Act</i> is generally <u>not applicable</u> (independent contractor likely excluded from bargaining unit)	<i>Labour Relations Act</i> <u>applies</u> to employee
Cannot claim damages, generally, for wrongful dismissal if termination of contractual relationship	Can claim damages for wrongful dismissal
More difficult for the employer to assert ownership of invention created by independent contractor (unless specific clause within contract)	Easier to assert ownership of invention created by employee in course of work
No entitlement to group benefits	Obligation to pay employees any existing group benefits with respect to workplace compensation system
Employer generally has no obligation for deductions (Independent contractor responsible for own tax and insurance arrangements)	Employer is responsible for statutory deductions (tax, CPP, EI)
Employer obligated to pay HST on services rendered by independent contractor; however, opportunity for employer to obtain input tax credits for the GST paid	No HST paid on wages
CPP and EI are not relevant	Employer must make matching contributions to CPP and EI deductions, and must remit the employee's contribution
Generally responsible for own training and tools	Employer responsible to provide some training and tools
Employer has less control over what work is done (limited scope of authority)	Employer has control over what work is done, and <i>how</i> it is accomplished
Employer less likely to be held vicariously liable for actions of independent contractor	Employer may be vicariously liable for actions of employee in course of work
Limited costs of maintaining contractual relationship	Administrative (payroll, etc) and Human Resource (training, etc) costs of employees
In case of employer's insolvency, no priority over other creditors	In case of employer's insolvency, employees have some limited statutory priority over other creditors

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