



Employment, Employee versus Contractor

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This Fact Sheet reviews the legal differences between employees and contractors.

Workers are people who do work for others and get paid for that work. Workers may do this as self-employed, be in business to benefit themselves and have many different clients (contractors) or may do work solely for the non-profit.

The legal difference between workers who are contractors and those who are employees may seem insignificant for the day-to-day operations of a non-profit. Presumably each gets the work done and is paid for that work. The distinction is important for the tax and benefit implications and for the availability of employment standards protections. Getting it wrong is problematic and can adversely affect a non-profit's bottom line.

The difference between employees and contractors is often confusing:

- Both can have contracts describing the work they do and how much they will be paid.
- They may both be referred to either as "employee" or as "contractor" by others. A worker may be called a contractor while in law, the worker is an employee or vice versa.

One of the important practical and legal differences between employees and contractors is that employers must make deductions for taxes, CPP and EI, from the wages of employees and "remit" (send) those amounts to the Canada Revenue Agency.

The factors used by the Canada Revenue Agency ("CRA") to determine if a worker is an employee or a contractor are: control, tools and equipment, financial risk/reward, dependence, and intention of the parties. These factors are described in the chart below. The CRA looks at all the factors and weighs them together to decide if a worker is more likely an employee or a contractor of the non-profit paying for the work ("payer").

Factor	More Likely an Employee	More Likely a Contractor
Control	Work controlled by payer e.g., dictating hours and location of work.	Work controlled by worker e.g., independence of worker in setting own hours and location of work.
Tools and Equipment	Tools, space, supplies, or equipment required to do the work provided by payer.	Tools, space, supplies, or equipment required to do the work provided by worker.
Financial Risk/Reward	Payer stands to lose/profit because of the work done.	Worker stands to lose/profit because of the work done.
Dependence	Worker only has one client.	Worker has more than one client.
Intention of the Parties	Intended to create employer-employee relationship.	Intended to create a business/self-employment relationship.

If a worker is found to be an employee rather than a contractor, the non-profit could:

- Owe wages for sick pay, vacation pay, overtime, parental leave, or severance.
- Owe contributions to CPP/EI for both the employee and employer portions going back 6 years.
- Owe income tax deductions.
- Owe workers' compensation premiums.
- Potentially face increased future premiums, legal costs, and penalties.
- Potentially face damages if the worker is found to be an employee who was wrongfully dismissed.
- Contracts with contractors should ensure that the worker understands that they will be responsible for applicable taxes and WCB registration.