

How to Identify an Employer-Employee Relationship

February 2001

This publication is provided as a guide only. It is not intended as a substitute for the *Employer Health Tax Act* and Regulations.

General

Employers are required to pay Employer Health Tax based on remuneration paid to employees who report for work at a permanent establishment in Ontario, and to employees who do not report for work at a permanent establishment but who are paid from or through the employer's permanent establishment in Ontario.

In making a determination regarding the existence of an employer-employee relationship, many factors have to be taken into consideration. In addition to considering the terms and conditions of the worker's employment, the Client Accounts and Services Branch will consider rulings issued by Canada Revenue Agency (CRA) regarding Canada Pension Plan and Employment Insurance, CRA's guidelines for specified industries, and common law principles (based on precedents set by court decisions).

Canada Revenue Agency's (CRA) Employment Insurance (EI) and Canada Pension Plan (CPP) rulings

A CRA ruling is an official decision that is issued by an authorized officer of CRA and can be requested by an employer or a worker. A ruling determines whether or not a worker is in pensionable employment (CPP) and/or insurable employment (EI). A ruling also indicates whether a worker is an employee or self-employed.

For EHT purposes, the ministry will accept a CRA CPP/EI ruling regarding the employment status of a worker that has been issued either in the current or the four immediately preceding years. A ruling will be accepted by the ministry only as it applies to the hirer and the worker(s) named in the ruling.

Canada Revenue Agency's (CRA) Employment Insurance (EI) and Canada Pension Plan (CPP) guidelines

CRA has guidelines for specified industries that outline the requirements of CPP and EI legislation. The ministry has considered CRA's guidelines in developing information bulletins for various industries including real estate salespersons and placement agencies.

Common law principles

Although the terms employer and employee are defined in the EHT Act, the Act does not define the circumstances under which an employer-employee relationship exists. It is necessary to establish whether the worker is hired under a contract of service or a contract for service.

A contract of service, or employer-employee relationship, generally exists when a worker agrees to work for an employer, on a full-time or part-time basis, for a specified or indeterminate period of time, in return for wages or a salary. The employer has the right to decide where, when and how the work is to be done.

A contract for service, or business relationship, generally exists when a worker agrees to perform specific work for a payer in return for payment. The self-employed worker is not normally required to perform the services personally.

In order to determine whether a worker is an employee under a contract of service or self-employed under a contract for service, reference must be made to common law principles. The terms and conditions of the worker's employment are examined and analysed as they relate to the following four factors: (a) control (b) ownership of tools (c) chance of profit/risk of loss and (d) integration. It is important to note that one factor alone is not conclusive in the determination.

Control test

The control test is used to determine whether a person is in a position to order or require not only what work is to be done, but also how it is to be done. Generally, in an employer-employee relationship, the employer controls, directly or indirectly, the way the work is to be done and the work methods used. The employer assigns specific tasks that define the real framework within which the work is to be done. The payer exercises control if he/she has the right to hire or fire, and decide where, when and how the work will be done. If such is the case, then the hirer clearly exercises control over the worker, who may then be considered to be an employee for EHT purposes.

It is not necessary that control actually be exercised, only that it can be exercised.

Ownership of tools

In an employer-employee relationship, the employer generally supplies the equipment and tools required by the employee. In addition, the employer covers the following costs related to their use: repairs, insurance, transport, rental, and operation. The main points to consider are:

- the amount invested
- the value of equipment and tools
- the rental and maintenance of equipment and tools.

Ownership of the tools, however, is not always a determining factor. The fact that a worker uses his or her own equipment when performing the work is not sufficient to conclude that the person is self-employed, as all factors must be considered. In certain occupations (e.g. auto mechanics, carpenters, photographers) it is customary for employees to use their own tools.

Chance of profit/risk of loss

Generally, if an employer-employee relationship exists, 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, and delivery and shipping costs. The employee assumes little or no financial risk and is entitled to his or her full salary or wages regardless of the financial health of the business.

Integration or organization test

The integration or organization test examines whether the tasks performed by an individual form an integral part of the business (i.e. an employer-employee relationship exists) as opposed to merely being accessory to the business (i.e. the individual is an independent contractor).

The test will also determine whether the individual is in business in his or her own right and provides services to another business as an independent contractor.

Part-time or casual workers

The fact that an individual may be employed on a part-time or casual basis has no effect on whether the individual is considered to be an employee or a self-employed individual for EHT purposes.

Written interpretations

To obtain a written interpretation on a specific situation not addressed in this publication, please send your request in writing to:

Ministry of Revenue
Tax Advisory Services Branch
Income Tax Related Programs Section
Employer Health Tax
33 King Street West, 3rd Floor
Oshawa ON L1H 8H5

Related publications

Other publications which provide further details on this topic include:

Commissioned Real Estate Salespersons - How to Identify an Employer-Employee Relationship
Placement Agencies and their Workers - How to Identify an Employer-Employee Relationship

More information

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