



ARE YOU AN INDEPENDENT CONTRACTOR OR EMPLOYEE?

Some companies tell workers they are independent contractors even when they are truly employees. They do this to avoid following basic labour laws and paying employee benefits and other costs. This is called misclassification of workers. Know what steps to take to determine your status as a worker and understand which laws protect you.

KNOW THE DIFFERENCE

Employment status (whether we are employees or independent contractors) directly affects our entitlement to basic rights such as minimum wage, overtime pay, health and safety protections, job-protected leaves, human rights and the right to bargain collectively and join a union.

Employment status also affects our right to Employment Insurance (EI), Canada Pension Plan, (CPP) and Workplace Safety and Insurance (WSIB) or workers' compensation as it is often called. It affects how we are treated under the Income Tax Act. Employment status also affects what we can do when wages go unpaid or problems happen a work.

You may be an EMPLOYEE when at least some of the following describes your work:

- You receive training from the company.
- The company supervises your work.
- You do not have control over your work, hours, or rate of pay.
- You work with tools or equipment that the company gives you.
- Your boss is the one who makes a profit or loss. You don't pay the costs of running the business or get the profits over and above your wages.
- Your work is clearly part of the business.

You may be an INDEPENDENT CONTRACTOR or SELF-EMPLOYED when some of the following describes your work:

- You control how your work is done. You may hire other people to assist in doing the work and you, not the company, direct their work.
- You can freely negotiate your pay and when your work has to be done.
- You own and are responsible for some of the tools or equipment you use to work.
- You take profit or loss from the work. If there is a profit, you receive it, and if there is a loss — then you are responsible for the loss.
- You are not part of the business. You have a freedom to choose who you work for, and can work for different companies at the same time.

What if you still don't know the difference?

Sometimes you can't tell whether you are an independent contractor or employee. For example, your boss might supervise your work, but you use some of your own tools. In these cases there is no correct "answer".

Call S.W.E.A.C for information on resources to help you determine your employment status.

KNOW THE LAWS THAT PROTECT YOU

Understand how the law affects you as an employee or an independent contractor. This information will help you decide which steps to take and who to contact if there is a problem at work.

Ontario Human Rights Code: Prohibits workplace discrimination and harassment based on race, colour, ethnicity, country of origin, age, sex, gender identity, gender expression, sexual orientation, disability, marital and family status, religion and citizenship and pardoned criminal offences. A worker who believes they have faced discrimination and harassment based on a human rights ground can file a complaint with the Human Rights Tribunal.

Ontario Health and Safety Act: Employees and independent contractors both have rights and responsibilities for healthy and safe working conditions.

Employment Standards Act (ESA): As an employee you have the right to earn at least **minimum wage** and receive overtime pay, vacation pay, and public holidays. You have access to job-protected parental leave. Among other protections, you may receive termination and severance if you are fired from work. Independent contractors do not have these rights to basic employment standards.

Employees can make a complaint to the Ministry of Labour if they do not get paid the wages they are owed. There is no cost to do this. Independent contractors have to go to court, pay certain fees and complete complicated legal documents. If a worker loses their case in court they might even have to pay some of the legal costs of the person they complained against.

Canadian Pension Plan (CPP): The CPP is supposed to provide us with a pension plan when we retire or disability benefits if we are unable to work. When you are employed, you and your employer pay into the CPP. If you are an independent contractor then you alone have to make payments to CPP.

Workers Safety and Insurance Board (WSIB): When you are an employee, your employer pays premiums, like insurance payments, to ensure that you will be compensated if you have been injured or become sick at work. If you are an independent contractor you are responsible for paying for your own WSIB coverage.

Employment Insurance (EI): If you are an employee, you and your employer make payments to EI. When you lose your job, are unemployed or require special benefits, you can apply for EI benefits. If you are an independent contractor, you are not entitled to EI when you are unemployed. However, you may be eligible for special benefits (maternity, sickness, parental, or compassionate care only). Participation in these specific benefits is voluntary.

To become eligible for these benefits you must:

- enter into an agreement with the Commission and begin paying EI (application on-line or through Service Canada) and
- be a Canadian citizen or a permanent resident of Canada.

Income Tax: Both employees and independent contractors have to pay income tax. As an employee, your employer has to deduct income taxes from each pay cheque and give that money to the government on your behalf. When you are an independent contractor, you declare your income and pay taxes to the government directly.

Independent contractors can deduct more expenses related to their job (for example, gas or cell phone costs) which means they sometimes pay less taxes. Employees can sometimes deduct a limited number of job-related expenses for tax purposes.

It's important to be sure about your employment status. If you have filed your taxes as an independent contractor and declared expenses related to the work you do, you may have to repay some taxes related to these deductions if you realize that you are really an employee.

PROTECT YOURSELF

Even if you sign a contract saying you are an independent contractor, you may not be. Your employer cannot simply change your employment status by paying you like an independent contractor. What determines whether you are an employee or an independent contractor is **how the work is done**. If you sign a contract that says you are an independent contractor or self-employed when you are truly an employee, you should not lose your rights.

- When you are asked to sign a contract, ask for some time to look it over first so that you fully understand what the contract says. However, in some cases, this might not be possible as your boss might put pressure on you to sign the contract without reviewing it thoroughly.
- Always ensure that you get a copy of any contract you sign for your own documentation and safe keeping. This could help you later on if you need to prove your employment status for EI and other benefits.
- Write down the details of your work; dates, hours, pay you received and the details about the work you do every day. If you need to ask for your overtime pay, vacation pay or minimum wage, it will help to have this documentation.
- It is illegal for your boss to terminate you for speaking about your rights, but many workers get terminated when they speak out. This is called reprisal. Good documentation of all details of your work may be helpful later.
- Talk to other workers. Find out if they signed the same contract. Attend a S.W.E.A.C info session as a group to learn how you can protect yourself.
- If you are owed wages, write a letter demanding what you are owed. Give your boss a deadline.
- If you are fired, forced to quit or laid off, you may be eligible for Employment Insurance. Your detailed records will help when applying for EI benefits.
- It may be difficult to prove that you are an employee. Contact S.W.E.A.C for assistance, you may be able to file a complaint with the Ministry of Labour.

Marcus is a plumber. He worked for a company for over a year. He was always treated as an employee, given his hours and location of work by his employer. After a brief layoff, Marcus returned to work where his employer notified him that he was now an independent contractor. The company stopped paying EI, CPP, holiday pay, vacation pay and deducting taxes. His employer never told him why his employment status had changed and he never signed an agreement with Marcus. Marcus believes he is not an independent contractor and he does not understand what the employer means when he tells Marcus that he is now a subcontractor.

Many workers like Marcus are really employees that have been misclassified.



Still having a difficult time determining if you are an employee or independent contractor/self-employed? Call S.W.E.A.C.

GET SUPPORT

Ministry of Labour

To find out more about filing a claim for unpaid wages.

1-800-531-5551

www.labour.gov.on.ca

Workers Safety and Insurance Board (WSIB)

For information on forms, claims, benefits and other inquiries.

1-800-387-0750

www.wsib.on.ca

Ministry of Labour, Occupational Health and Safety Branch

For information on health and safety at work.

1-800-268-8013

www.labour.on.ca

Canada Pension Plan (CPP)

Visit the website to answer general questions on your benefits under the CPP.

www.servicecanada.gc.ca/eng/isp/cpp/cpptoc.shtml

Service Canada

For information on your EI and other income benefits when you are an employee or independent contractor.

1-800-206-7218

www.servicecanada.gc.ca

Canada Revenue Agency (CRA)

For more information on your employee status and how to claim your taxes.

1-800-959-8281

www.cra-arc.gc.ca

The Sudbury Workers Education and Advocacy Centre
Contact us for more information on your rights or for
support to make a plan.

705-470-2173, toll free: 1-800-470-2173

helpline@sudburyworkerscentre.ca



Funded by
Finance e par

ATKINSON
For social and economic justice

 The Law
Foundation
of Ontario

Source: Workers' Action Centre/Ontario Ministry of Labour. This fact sheet contains general information only. Contact the Ministry of Labour for more details.