

Employee or Self-Employed: What's the Difference?

Steven Van Alstine


Vice-President, Education
The National Payroll Institute

One of the more complex payroll issues is determining whether a worker is an employee or a self-employed individual. Increasingly more organizations are choosing to contract out for service rather than hire, so it is essential for you to ensure compliance in this area. Although the differences can sometimes appear insignificant, incorrectly assessing the relationship can result in costly repercussions for your employer and the individual.

Employment status directly affects whether an employer must withhold, remit and report statutory withholdings from an individual's earnings. It also affects an individual's entitlement to employment insurance (EI) benefits and how they are treated under other legislation such as the *Canada Pension Plan*, *An Act Respecting the Québec Pension Plan* and the *Income Tax Act*.

It is not up to the individual you are hiring to determine whether an employee-employer relationship exists. Rather, the facts of the working relationship as a whole determine one's employment status.





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Contract of Service

A contract **of** service is an arrangement whereby an individual (an employee) agrees to work full-time, part-time or casually for an employer for a specified or indeterminate period. That employee may be paid a salary, an hourly rate, commission, piecework or some other form of remuneration. In addition, the employment relationship may be permanent or temporary. The employer establishes a job description and the requirements of the role and evaluates the employee's job performance.

The employer is responsible for deducting Canada Pension Plan (CPP) and Quebec Pension Plan (QPP) contributions, EI and Quebec Parental Insurance Plan (QPIP) premiums, and income tax, as applicable, from remuneration or other amounts paid to employees. The employer must remit these deductions along with its share of C/QPP contributions and EI/QPIP premiums to the Canada Revenue Agency (CRA) and Revenu Québec. An employer who fails to do so must pay both the employer's and the employee's share of any contributions and premiums owing, plus penalties and interest.

Contract for Service

A contract **for** service is an agreement whereby one party agrees to perform specific work stipulated in a contract for another party. This individual is usually required to produce a given result within a set period of time, and the payer is not typically involved in the performance of the work and therefore has no control over it. A person who carries out a contract for service may be considered a contract worker, self-employed person or independent contractor.

As a rule, an employee derives work income principally from the work they carry out for a single employer. In contrast, a self-employed individual provides services to several clients.

Distinguishing a Contract of Service from a Contract for Service Outside Quebec

The CRA takes a two-step approach to determine if an individual is engaged as an employee or a self-employed individual.

Step 1) Intent: The CRA will ask if the two parties intended to enter into an employee–employer relationship or business relationship. They will require a copy of the contract or statement from both parties regarding their intentions as part of the audit examination.

Step 2) Elements of the Relationship: The following chart summarizes the criteria the CRA uses to distinguish a contract of service from a contract for service.

Factor	Employee	Self-Employed
Control	<ul style="list-style-type: none">▶ The relationship is one of subordination.▶ The payer can direct, scrutinize and effectively control many elements of how the work is performed.▶ The payer can control both the results of the work and the method used to do the work.▶ The payer can determine what jobs the worker will do.▶ The worker may receive training or direction from the payer on how to do the work.	<ul style="list-style-type: none">▶ The work is done independently and without anyone overseeing how the job is being done.▶ The worker is usually free to work when and for whom they choose and may provide their services to different payers at the same time.▶ The worker can accept or refuse work from the payer.▶ The working relationship between the payer and the worker does not present a degree of continuity, loyalty, security, subordination or integration.
Ownership of tools and equipment	<ul style="list-style-type: none">▶ Payer supplies most of the tools and equipment.▶ The worker supplies the tools and equipment, and the payer reimburses the worker for their use.	<ul style="list-style-type: none">▶ The worker provides the tools and equipment required▶ The worker is responsible for the cost of repairs, insurance and maintenance; and retains the right over the use of these assets.
Subcontracting work or hiring assistants	<ul style="list-style-type: none">▶ The worker cannot directly hire helpers or assistants.	<ul style="list-style-type: none">▶ The worker does not have to perform the service personally; they can hire another party to complete the work.
Financial risk	<ul style="list-style-type: none">▶ The worker is not usually responsible for any operating expenses.▶ The worker is not financially liable if they do not fulfill the obligations of the contract.	<ul style="list-style-type: none">▶ The worker is financially liable if they do not fulfill the obligations of the contract.▶ The worker does not receive any protection or benefits from the payer.
Responsibility for investment and management	<ul style="list-style-type: none">▶ The worker has no capital investment in the business.	<ul style="list-style-type: none">▶ The worker has capital investment, manages their staff, can hire and pay individuals to help perform the work, and has established a business presence.
Opportunity for profit	<ul style="list-style-type: none">▶ The worker is not in a position to realize a business profit or loss.	<ul style="list-style-type: none">▶ The worker is compensated by a flat fee and can move onto the next contract if the work is completed early.

Further Resources

- ▶ National Payroll Institute: [Employee or Self-Employed Payroll Best Practices Guidelines](#)
- ▶ Canada Revenue Agency: [RC4110 Employee or Self-employed?](#)
- ▶ Revenu Québec: [IN-301-V Employee or Self-Employed Person?](#)

Distinguishing a Contract of Service from a Contract for Service Within Quebec

Revenu Québec follows a three-step approach to determine if an individual is engaged as an employee or a self-employed individual.

Step 1) Intent: Both parties' intentions should be documented in the employment or independent contractor agreement. Without having established clear intentions, payers could be faced with significant fines and penalties should a government agency determine the independent contractor should have been treated as an employee.

Step 2) Civil Code of Québec: The employment is compared to the definitions of contract of employment and contract for services in the Code.

Step 3) Elements of the Relationship: The following chart summarizes the criteria Revenu Québec uses to distinguish a contract of service from a contract for service.

Factor	Employee	Self-Employed
Subordination in the performance of work – This is the <i>most important</i> criterion and may be the crucial factor in determining whether a worker is an employee or is self-employed.	<ul style="list-style-type: none"> ▶ The relationship is one of subordination. ▶ The payer can direct, scrutinize and effectively control many elements of how the work is performed. ▶ The payer can control both the results of the work and the method used to do the work. ▶ The payer can determine what jobs the worker will do. ▶ The worker may receive training or direction from the payer on how to do the work. 	<ul style="list-style-type: none"> ▶ The work is done independently and without anyone overseeing how the job is being done. ▶ The worker is usually free to work when and for whom they choose and may provide their services to different payers simultaneously. ▶ The worker can accept or refuse work from the payer. ▶ The working relationship between the payer and the worker does not present a degree of continuity, loyalty, security, subordination or integration.
Ownership of tools and equipment	<ul style="list-style-type: none"> ▶ The payer supplies most of the tools and equipment. ▶ The worker supplies the tools and equipment, and the payer reimburses the worker for their use. 	<ul style="list-style-type: none"> ▶ The worker provides the tools and equipment required. ▶ The worker is responsible for the cost of repairs, insurance and maintenance; and retains the right over the use of these assets.
Integration of the tasks carried out by the worker	<ul style="list-style-type: none"> ▶ Tasks carried out by the worker form an integral part of the activities of the employer's business. ▶ The worker derives work income principally from their work for a single employer. 	<ul style="list-style-type: none"> ▶ The services the worker provides to a business are not activities that the business normally engages in. ▶ The worker provides services to a number of clients.
Financial liability	<ul style="list-style-type: none"> ▶ The worker is not usually responsible for any operating expenses. ▶ The worker is not financially liable if they do not fulfill the obligations of the contract. 	<ul style="list-style-type: none"> ▶ The worker is financially liable if they do not fulfill the obligations of the contract. ▶ The worker may make a profit or incur a loss and is responsible for operating costs
Specific result of the work	<ul style="list-style-type: none"> ▶ The relationship continues after the completion of specific tasks. ▶ The worker has entered into an agreement to work for a defined period of time. 	<ul style="list-style-type: none"> ▶ The worker is free to determine the method used to achieve the results. ▶ Once the specific task provided for in the contract is completed, the business relationship ends
Agreement between the parties regarding their relationship	<ul style="list-style-type: none"> ▶ The payer pays the contribution to CNESST on wages paid to the worker. ▶ The worker is eligible to participate in the payer's group insurance plan. ▶ The worker is entitled to payment of severance pay. 	<ul style="list-style-type: none"> ▶ The worker has personal coverage under CNESST. ▶ The worker is not provided employee benefits. ▶ The worker does not receive any protection or benefits from the payer.

If the status of a worker outside of Quebec is unclear, a ruling may be requested from the CRA by completing form **CPT1 Request for a CPP/EI Ruling – Employee or Self-Employed?**

For an employer in Quebec, a ruling may be requested from Revenu Québec by completing form **RR-65-V Application for Determination of Status as an Employee or a Self-employed Person.**