

Employee or Self-Employed Person?



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Workers can be considered **employees** or **self-employed persons**. The key factor in determining a worker's status is the nature of the relationship between the worker and work provider. In an employer-employee relationship (based on a written or verbal employment contract), the person who pays the salary or wages must make source deductions and pay employer contributions. These obligations do not apply where the services of a self-employed person are retained.





Criteria used to determine a worker's status

To determine whether a worker should be considered an **employee** or a **self-employed person**, we must assess whether a contract of employment exists under which the worker agrees, for a limited period of time and for remuneration, to work under someone else's direction. To do so, we use the following six interrelated criteria, which must be considered as a whole:

- subordination in the performance of work;
- the financial or economic criterion;
- ownership of tools;
- integration of the tasks carried out by the worker;
- the specific result of the work;
- the parties' attitude regarding their relationship.

These criteria are also discussed in the interpretation and administrative practice bulletin RRQ.1-1/R2, *Status of Workers*.

Subordination in the performance of work

Subordination in the performance of work is **the most important criterion** and may be decisive in determining whether a worker is an employee or a self-employed person.

The following are generally indicative of subordination:

- the work provider controls execution of the work;
- the worker personally carries out the contract;
- the work schedule and location are determined by the work provider;
- the work provider establishes conditions governing hiring and dismissal.

Subordination exists when the work provider has authority over the worker. This is apparent, for example, where the work provider determines the tasks to perform, methods to use and work schedule to follow.

Employers direct and control their employees' activities and those of their employees' replacements, should the employees no longer be able to perform their tasks.

Subordination involves the work provider being able to check and evaluate the work performed, and take disciplinary measures. An employer assumes the cost of any damages caused by an employee in performing his or her tasks.

Employers generally pay training, professional development and workplace-related costs for their salaried employees.

When a worker is self-employed, the work provider does not usually determine the work schedule, location or methods. Self-employed persons can get help or hire a substitute to do the work, and can offer their services to more than one client.

The financial or economic criterion

The financial or economic criterion is used to determine the nature of the financial relationship between the worker and work provider.

In an employer-employee relationship, the employer covers the business' operating costs and the employee does not assume any financial risk. Any financial losses incurred by the business do not directly affect the employee's remuneration, and he or she continues to be entitled to an annual vacation, paid leave and fringe benefits.

Self-employed persons can turn profits but must assume any financial losses associated with their work. They are responsible for covering the operating costs of their business, for example, meals, transportation and accommodation.

Ownership of tools

Determining ownership of tools, equipment and materials is also useful for establishing a worker's status.

In an employer-employee relationship, the employer generally owns the tools, equipment and materials, provides everything necessary for the employee to perform the work, and covers the related expenses, including financing, operating and repair costs.

Self-employed workers usually supply their own tools and equipment and pay the related costs.

Integration of the tasks carried out by the worker

This criterion should be considered from the worker's point of view. If a worker's tasks are integral to the business' activities, an employer-employee relationship probably exists. For example, a worker who sells goods produced by a business is generally considered an employee if sales are among the business' activities. An outside consultant is considered a self-employed person if the services rendered are not activities the business normally engages in.

As a rule, employees derive work income primarily from work performed for a single employer, whereas self-employed persons offer their services to a number of clients.

The specific result of the work

A self-employed person's services are generally retained for the purpose of accomplishing specific tasks and that person is free to determine the method that will be used to achieve the results.

Once the specific work provided for in the contract is done, the business relationship ends.

The parties' attitude regarding their relationship

The parties' attitude regarding their relationship is a criterion that refers to various aspects of their agreement with regard to work conditions. The following factors, for example, must be taken into consideration:

- whether the work provider pays the contribution to the Commission de la santé et de la sécurité du travail (CSST) on the salary or wages paid to the worker;
- the overall interpretation of the contract and its terms of renewal;
- the worker's eligibility for the employer's group insurance plan;
- the payment of severance pay.



Performing, recording and film artists

When an artist gives performances under an employment contract, the employer has the same obligations under Québec tax legislation as any other employer. However, artists may choose to be considered self-employed if, in a given year, they have signed contracts with one or more producers and work in a field of artistic endeavour covered by the *Act respecting the professional status and conditions of engagement of performing, recording and film artists*. When an artist resident in Canada informs a producer that he or she has chosen to be considered self-employed, the producer has none of the fiscal obligations an employer would have with regard to the artist.

Two interpretation and administrative practice bulletins can be consulted on this subject:

- Bulletin IMP.1015-5/R1, *Fiscal obligations of a person who employs an artist working in one of the fields of artistic endeavour covered by the Act respecting the professional status and conditions of engagement of performing, recording and film artists*.
- Bulletin IMP.80-3/R4, *The fiscal status of an artist working in one of the fields of artistic endeavour covered by the Act respecting the professional status and conditions of engagement of performing, recording and film artists*.



Importance of determining the correct status

Workers who consider themselves to be self-employed or are considered self-employed by a work provider may nonetheless be considered employees according to our criteria. Employers sometimes encourage certain employees to become self-employed. However, the fact that both parties are in favour of this change does not mean we will consider the worker to be self-employed.

We may, in the course of an audit, assess the situation and conclude that a worker identified as a self-employed person is actually an employee. The employer will then have to pay the employer contributions that should have been remitted.

Help in determining a worker's status

If the work provider and worker disagree on the worker's status, they can ask us for a ruling by filing the following forms:

- *Application for Determination of Status as an Employee or a Self-Employed Person* (form RR-65-V)
- *Questionnaire for Determination of Status as an Employee or a Self-Employed Person* (form RR-65.A-V)

The Canada Revenue Agency also publishes a guide entitled *Employee or Self-Employed?* (RC4110), which is intended for work providers and workers.

Note that our criteria may differ from those used by other government departments and agencies. We are not bound by decisions concerning a worker's status rendered by other government bodies for purposes of laws other than those that we administer.

For further information, contact us.

This publication is provided for information purposes only. It does not constitute a legal interpretation of the provisions of the *Taxation Act* or any other legislation.

To contact us



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Cette publication est également disponible en français et s'intitule *Travailleur autonome ou salarié?* (IN-301).

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Québec



IN-301-V (2010-07)