

## The importance of determining employment status

As a business owner hiring or engaging workers to provide services, it is important that you determine whether the workers providing services to your business are employees or independent contractors. If the workers you engage in your business are employees then your business is an employer. In such case, as an employer, your business is responsible for deducting and remitting to Canada Revenue Agency (CRA) Employment Insurance (EI) premiums, Canada Pension Plan (CPP) contributions and income tax from any remuneration paid to the employees.

Where the employer fails to deduct and remit the employees' CPP contributions and EI premiums along with the employer's share of both, the employer will be responsible to pay not only the contributions and premiums owing but also penalties and interest.

Further, in an employment relationship, the employer, whether in the provincial or federal jurisdiction, will be subject to numerous protections under the employment standards legislation, human rights legislation, federal and provincial privacy legislation, occupational health and safety legislation, workers' compensation legislation, and labour relations legislation.

There are also common law obligations that employers are subject to such as the requirement to provide reasonable notice upon termination of an employee's employment without cause.

How should you, as an employer, determine whether the worker you have engaged is an employee or not? You may consider the decision of the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 S.C.R. 983 that is instructive on this issue. The Supreme Court in *Sagaz* stated that while there is not a single universal test that may be employed to determine conclusively whether a worker is an employee or an independent contractor, the totality of the relationship must be considered including the following non-exhaustive list of factors:

The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.

The Court also added that there is no set formula as to the application of these factors and the relative weight of each will depend on the circumstances in each case.



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