

WORKER CONTRACT STATUS DETERMINATION

Background:

The purpose of this Administrative Procedure is to assist departments and schools in determining the relationship between a worker and the Division, in accordance with Canada Revenue Agency guidelines, the *Employment Insurance Act*, the *Income Tax Act* and the Canada Pension Plan.

The Division has a legal obligation to determine the status of workers and to ensure appropriate contractual or employment terms and actions are consequently applied when hiring contractors or employees, as the rights and obligations of workers depend on the nature of the working relationship between the worker and the Division.

Definitions:

Accountable Individual:

means the person responsible for hiring or retaining a worker and establishing a contract or determining the worker's relationship to the Division.

Employee:

means an employee of the Division hired to perform service for the Division.

Four-fold Test:

determines who in the relationship has control, ownership of tools, the chance of profit and risk of loss.

Independent Contractor:

means a person, individual or other entity, retained by the Board, either directly or through a corporation, to perform services for the Division.

Worker:

means either an employee or independent contractor.

Procedures:

1. The [Canada Revenue Agency Guide RC4110 – Employee or Self-Employed?](#) shall be used to provide guidance in determination of a worker's employment status.
2. An individual is considered an employee by the level of:
 - 2.1. Control: The nature and degree of control exercised by the Division on how, when and where the work is done. The "control test" determines whether the organization is in a position to order not only what is to be done, but also how it is to be done. Where such control exists, the courts have generally regarded the relationship as that of an employer and employee. The more control the

organization has, the more likely the worker is an employee. Four factors are used in the control test:

- 2.1.1. Selection: Who has the power to select the worker?
 - 2.1.2. Dismissal: Who has the right to suspend or dismiss the worker?
 - 2.1.3. Method of work: Who controls the method the job is carried out?
 - 2.1.4. Remuneration: Who sets the payment scale for wages or other remuneration to the worker?
 - 2.2. Ownership of Tools: The tools necessary to perform work are typically provided to an employee. An independent contractor usually supplies their own tools. Tools may include cellphones, computers and trade-specific tools such as those for carpenters or electricians.
 - 2.3. Opportunity for Profit: If the opportunity for profit does not change in relation to the work performed by the worker, it indicates an employee relationship.
 - 2.4. Risk of Loss: If the worker bears no risk of loss and will be paid regardless of the work completed in a certain period of time, this is likely an employee relationship. If the individual assumes a high degree of financial risk and will not receive payment unless certain work is completed, the more likely the worker is an independent contractor.
3. Consequences
- 3.1. Workers who are employees have Canada Pension Plan (CPP) contributions, Employment Insurance (EI) premiums and income tax deducted from the worker's pay. The Division is required to remit these deductions, together with the employer's share of CPP contributions and EI premiums to the Canada Revenue Agency. These deductions and remittances are not made for independent contractors.
 - 3.2. If a worker is incorrectly identified as an independent contractor, the Division shall be responsible for paying both the employee's share and employer's share of CPP contributions, EI premiums, plus interest and penalties under the *Income Tax Act* or the entitlement the worker would have otherwise received under respective terms and conditions as an employee.
 - 3.3. Where a worker is to be hired or retained, the supervisor shall, in consultation with the Associate Superintendent of Human Resources, determine whether the worker is an employee or an independent contractor. Once the relationship is determined, employees shall be hired in accordance with Human Resources processes and procedures, while independent contractors shall be contracted in accordance with Purchasing and Contract Services.

Reference:

Section 52, 53, 68, 222 *Education Act*
Canada Pension Plan
Employment Insurance Act
Income Tax Act
Revenue Canada RC4110