



SHARON BUNCE
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EMPLOYEE OR INDEPENDENT CONTRACTOR?

Mitigate Risk with the Four-Factor Test

Hiring independent contractors can offer many advantages to your business, and in some cases, independent contractors are common practice in some industries. Independent contractors can be beneficial for both the business and individual, but with increased scrutiny by the Canada Revenue Agency, employment standards enforcement and the courts, the risk of blurring the lines between employee and independent contractor can expose a business to considerable financial risks.

If a court of government officer determines that an independent contractor is in fact an employee, it can lead to penalties and fines related to unpaid employment taxes. If you terminate an individual whom you treat as an independent contractor but a court determines to be an employee, it can lead to termination payments under ESA and common law entitlements.

Canadian courts use the “four-factor” test to determine whether a worker is an employee or an independent contractor.

In addition, the Canada Revenue Agency has information to help businesses and individuals determine whether someone is an employee or self-employed, including guide “RC4110 Employee or Self-employed?” Understanding each of the four main factors can help you ensure that you maintain a clear distinction between employees and independent contractors.

If you hire independent contractors, you can implement certain measures to clarify the line between employee and contractors. Having a

FOUR-FACTOR TEST

The first factor is the **CONTROL TEST**

1 This factor considers the ability of the business to control the actions of the worker. The more control the business has over the worker, the more likely the worker is to be classified as an employee rather than an independent contractor. Things like setting hours of work, monitoring performance and dictating the amount and location of work suggest an employer–employee relationship.

The third factor is the **OWNERSHIP OF TOOLS & EQUIPMENT TEST**

3 In most cases, an independent contractor owns their own tools and equipment, whereas an employee uses company-owned tools and equipment. There are, of course, exceptions, such as mechanics who are employees of automotive repair shops but who own their own tools.

The second factor is the **ECONOMIC REALITY TEST**

2 Employees generally do not stand to gain or lose financially outside of a set compensation structure. That is to say, employees are generally paid their wages regardless of the outcome of the work they complete, with some exceptions, such as commission and piecework. In contrast, an independent contractor’s profit may be highly dependent on the completion of their work.

The fourth factor is the **INTEGRATION TEST**

4 The last factor assesses the worker’s degree of involvement in the organization. If the services a worker provides are essential to the organization, they are likely an employee. If the services a worker provides are part of a separate business not under control of the company, the individual is likely an independent contractor.

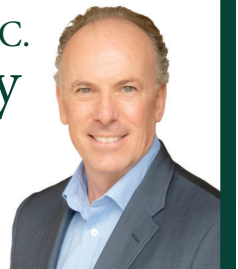
written service agreement that clearly defines the terms of the relationship is essential. In a true test of an independent contractor, they should have the ability to set and negotiate terms, including the freedom and control that they have as they are agreeing to provide their services to a business.

While the independent contractor performs work for your company, ensure that they meet all legislated requirements, including health and safety. Keep in mind that although the independent contractor is not an employee of your business, they are performing services for you, and you are ultimately responsible for their health and safety, including ensuring that they have completed legislatively required training. It is also important to be mindful of payment issues. You should pay the independent contractor through their business rather than to the individual directly.

Businesses can reap many benefits by hiring independent contractors as long as they are careful to avoid the potential drawbacks. The key issue for businesses to focus on is that they must maintain a clear distinction between who is an employee and who is an independent contractor. The best strategy to achieve this is to define the terms of the working relationship according to the four-factor test within a written service agreement. Then understand that you cannot rely solely on the wording in the agreement to keep you safe. The actual behaviours and actions of the business relationship matter a lot, and you must also adhere to the principles of the four-factor test throughout the business relationship.

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Dr. David C. Malloy



King’s University College Principal-elect

David C. Malloy, PhD has been appointed as our ninth Principal. Dr. Malloy will assume the role on July 1, 2019. He has a stellar academic background in applied ethics, philosophy, education and leadership with over 30 years of experience.

King’s is a publicly-funded Catholic post-secondary institution founded in 1954, academically-affiliated with Western University in London, Ontario.



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