

Are You Prepared For Your Independent Contractor's Employee Rights?



Many prognosticators predict 2016 as a tipping point in the growth of the 'gig' economy, as more people work multiple jobs to get ahead or just make ends meet.

As the number of contractors, freelancers, contingent workers and so forth increase the courts will continue to grapple with how to address the 'employment rights' of individuals who operate outside the traditional employer-employee employment relationship.

Employee V. Independent Contractors

Today there remain two primary relationships between work providers and the person/organization who 'employs' them; the worker is either an employee or an independent contractor. In Canada there are a series of questions used to help determine if an individual is working as an employee or a contractor. In some cases the nature of the independent working relationship is straightforward and in many other cases the line appears blurred. Although the intention of both parties in the relationship is taken into consideration in a court ruling, sometimes this shared agreement is not enough, especially when CRA (Canada Revenue Agency) becomes involved or when there is a dispute between the parties.

Independent Contractors Employment Rights

Recently a decision by the Human Rights Tribunal in Ontario illustrated that an independent contractor has some of the same rights as an employee.

In this case, *Panucci v. Seller's Choice Stockdale Realty Ltd.*, 2015 HRT0 1579 (CanLII), an independent contractor was awarded monetary damages after she quit working because she had experienced unwanted advances from the supervisor with whom she worked directly. In this case the employer organization was required to pay this independent contractor \$15,000 as monetary compensation 'for the

violation of her inherent right to be free from discrimination and for injury to dignity, feelings and self-respect’.

Essentially the Tribunal held that the independent contractor was entitled to the protections of the *Human Rights Code* that were laid out with respect to employment.

There have also been decisions with respect to the rights of ‘dependant’ independent contractors and notice of termination. A dependant contractor is essentially an independent contractor who works exclusively for one ‘employer’ and who is in a position of economic vulnerability because of the exclusive nature of the relationship with the employer. In the case of an independent contractor who is a dependent contractor upon ending of the relationship the dependent contractor could be entitled to reasonable notice of termination.

Clarify the Nature of Your Employment Relationship In Writing

If your organization is considering employing independent contractors it is important that you understand the implications of this relationship may be more complicated than you initially consider. An independent contractor may not be entitled to benefits, family leave, overtime or even necessarily reasonable notice of termination. However, the independent contractor may be afforded many of the same protections from harassment, discrimination and notice that your employees have and if you do not take steps to ensure their rights are protected this may end up costing you financially.

If your independent contractor is working for you regularly or just once it is still useful to ensure that the relationship is really that of a contractor because if CRS believes the relationship is that of an employer-employee both parties may be faced with an unexpected bill for untaken deductions.

Defining an independent contractor

A quick reminder of some of defining characteristics of an independent contractor relationship can be distilled into 4 key components

- Who controls the way in which the work is accomplished
- Who controls the tools of the trade
- Who is taking financial risk/makes a profit
- How tied/integrated the work is

Some of the questions to consider as you determine if your relationship with a worker falls into the independent contractor relationship include:

- Can the workers turn down assignments?
- Can the worker subcontract or assign the work to others?
- Who finds and assigns clientele?
- Does the worker have any management input or role?
- Are the activities of the worker supervised?
- Must the worker attend company meetings?
- How integrated is the workers activities, including location, hours, into workplace operations?
- Is there exclusivity? Does the worker work for other clients/employers or is the worker primarily dependent on one employer for obtaining work/income?