

Employees v. Independent Contractors v. Temporary Workers



In Canada, the classification of workers as employees, independent contractors, or temporary (agency) workers has significant implications for compensation, benefits, taxes, and employer obligations. Misclassifying workers can lead to compliance issues, legal disputes, and potential financial penalties. Below is an overview of the key areas where compliance issues often arise.

1. Worker Classification

- **Definition:**

- **Employees** generally work under the direction and control of the employer, use tools provided by the employer, and have less financial risk.
- **Independent Contractors** typically have more control over how and when work is done, provide their own tools, and bear financial risk for profit or loss.
- **Temporary Workers** are often provided through staffing agencies for a specified term or project. The agency is typically considered the legal employer, although the host organization directs the work.

- **Key Compliance Concern:**

Misclassifying an individual who functions like an employee as a contractor to avoid certain obligations can result in legal and financial penalties from federal and provincial authorities.

2. Compensation Obligations

1. Minimum Wage

- **Employees:** Must be paid at least the provincial or territorial minimum wage.
- **Contractors:** Not subject to minimum wage legislation; compensation is based on contract terms.
- **Temporary Workers:** Must also be paid in accordance with employment standards legislation, which typically includes minimum wage requirements.

2. Overtime Pay

- **Employees:** Entitled to overtime pay (the thresholds vary by province/territory; e.g., over 40 or 44 hours a week in many provinces).
- **Contractors:** No overtime entitlement unless specifically negotiated in their contract.
- **Temporary Workers:** Entitled to overtime if employment standards in their

province/territory deem them an employee of the agency or the client (this can vary, but generally overtime rules apply).

3. Holiday and Vacation Pay

- **Employees:** Entitled to statutory holiday pay and vacation pay as per provincial/territorial standards.
- **Contractors:** No entitlement to statutory holiday or vacation pay unless stipulated by contract.
- **Temporary Workers:** Must receive vacation and holiday pay in accordance with employment standards, typically from the staffing agency.

3. Benefits and Statutory Deductions

1. Employment Insurance (EI) and Canada Pension Plan (CPP)

- **Employees:** Employers must deduct EI and CPP contributions from the employee's pay and remit their share to the Canada Revenue Agency (CRA).
- **Contractors:** Generally responsible for making their own CPP contributions and are not eligible for EI (unless they opt-in under specific circumstances, such as self-employed EI special benefits).
- **Temporary Workers:** The staffing agency (as the official employer) deducts and remits EI and CPP for them.

2. Workers' Compensation

- **Employees:** Employers are required to register with the provincial workers' compensation board and pay premiums.
- **Contractors:** Typically responsible for obtaining their own coverage unless provincial regulations require the hiring company to cover them (some provinces make prime contractors responsible for coverage).
- **Temporary Workers:** The staffing agency typically handles workers' compensation coverage, but if coverage lapses or is inadequate, the host organization can become liable in certain jurisdictions.

3. Health and Other Benefits

- **Employees:** May be entitled to participate in employer-sponsored health, dental, disability, or retirement plans (not legally required in every province, but often provided voluntarily or through collective agreements).
- **Contractors:** Not entitled to employer benefits, unless included in the contractual agreement. Typically, contractors provide their own benefits.
- **Temporary Workers:** Generally do not receive the host organization's benefits; however, some staffing agencies offer limited benefit programs, and some collective agreements or certain provincial regulations may provide additional entitlements.

4. Tax Obligations

1. Payroll Taxes

- **Employees:** The employer must withhold income tax, EI, and CPP at source.
- **Contractors:** Responsible for remitting their own taxes (including income tax, GST/HST if applicable). The hiring entity does not withhold or remit on their behalf.
- **Temporary Workers:** The staffing agency (as the employer of record) withholds and remits taxes, EI, and CPP.

2. GST/HST Registration

- **Employees:** Not required to register for GST/HST on their employment income.
- **Contractors:** May be required to register for and charge GST/HST if providing taxable services, depending on total revenue and other factors.
- **Temporary Workers:** GST/HST considerations are handled by the staffing agency; the worker is treated as an employee of the agency.

5. Termination and Severance

1. Notice of Termination and Severance Pay

- **Employees:** Entitled to notice of termination (or pay in lieu of notice) and possibly severance pay (depending on the length of service and provincial/territorial rules).
- **Contractors:** Any termination provision is governed by the service contract. If the contractor is truly independent, employment standards legislation does not apply; however, misclassification could lead to claims for common law notice.
- **Temporary Workers:** Typically employed by the staffing agency. The agency must follow termination and severance rules under employment standards law. The host organization is typically not directly responsible, but disputes can arise if the relationship is deemed an employment relationship.

6. Liability and Risk of Misclassification

• Penalties and Back-Pay:

If the CRA or provincial authorities determine a contractor is actually an employee, the employer may be liable for unpaid payroll taxes, CPP/EI premiums, interest, and penalties.

• Employment Standards Remedies:

A misclassified worker could also be entitled to back payment for minimum wage, overtime, holiday pay, and vacation pay.

• Civil Liability:

The worker may pursue civil action for wrongful dismissal or severance if the relationship is deemed an employment relationship under common law principles.

7. Best Practices for Compliance

1. Written Agreements:

- Have clear, detailed contracts for contractors that define the scope of work, fees, control, and liability.
- Ensure temporary worker arrangements with staffing agencies outline each party's responsibilities.

2. Operational Consistency:

- Align day-to-day practices with the written agreement (e.g., if someone is classified as a contractor, avoid controlling their schedule or providing them with tools and equipment).

3. Periodic Reviews:

- Conduct internal audits of worker classifications to ensure alignment with the current guidelines from the CRA and provincial employment standards agencies.

4. Stay Informed of Changes:

- Compliance laws and guidelines can change. Employers should keep up-to-date with legislative developments at both federal and provincial levels.

5. Seek Legal or Professional Advice:

- When in doubt about classification or obligations, consult with legal counsel or an HR professional knowledgeable in Canadian employment law and CRA rules.

Bottom Line

Compliance issues in Canada between contractors, employees, and temporary workers generally revolve around proper classification and meeting the associated compensation, benefits, tax, and statutory obligations. Misclassification is one of

the most common and costly pitfalls, as it can lead to back pay, penalties, and legal disputes. By maintaining clear written agreements, respecting the nature of each working relationship, and adhering to all federal and provincial regulations, organizations can mitigate these risks and fulfill their obligations under Canadian law.

Employers can sidestep costly missteps by properly classifying workers, adhering to statutory obligations, using clear written contracts, keeping daily practices consistent with each classification, and conducting regular internal audits. If uncertain, seeking advice from legal or HR professionals specialized in Canadian employment law is a prudent first step.

Real World Cases

Here are two real-world stories from the Canadian landscape that show what can happen when there's confusion about who's an employee and who's an independent contractor (or something in between):

1. Uber Canada (Uber v. Heller)

What happened?

David Heller, an Uber driver in Ontario, filed a class-action lawsuit claiming that he and other Uber drivers were actually employees, not independent contractors. If that turned out to be true, they'd be owed protections under the Employment Standards Act—like minimum wage and vacation pay.

Why was it a big deal?

Uber's contract said any dispute had to be settled via arbitration in the Netherlands. The Supreme Court of Canada found that this clause was unconscionable (basically unfair) and said the drivers could bring their case in Ontario. That didn't automatically mean the drivers were employees, but it cracked open the door for them to argue it in a Canadian court. It was a wake-up call to companies trying to sidestep local laws with tough contractual clauses.

What's the takeaway?

Companies can't just rely on contract wording to classify workers and avoid local rules. Courts will look at the real working relationship. And if the relationship looks more like employer-employee, businesses could end up owing back pay, benefits, and even face legal or financial penalties.

2. Foodora Inc. (Ontario Labour Relations Board)

What happened?

Foodora couriers in Ontario wanted to unionize, and they claimed they were at least "dependent contractors," if not outright employees. Foodora argued they were independent contractors who weren't entitled to form a union under provincial labour laws.

Why was it a big deal?

The Ontario Labour Relations Board decided the couriers were indeed "dependent contractors." That meant they had a legal right to unionize, just like employees do. While Foodora soon left the Canadian market, this ruling was a major moment for gig-economy workers because it showed how seriously regulators and labour boards are taking the issue.

What's the takeaway?

Even if a company labels someone a contractor, if the worker is economically

dependent on that company (and the relationship looks more like an employer-employee dynamic), Canadian law might give them many of the same rights employees get—like unionizing. Businesses should be careful about how they structure and manage these relationships.

Bottom Line

Both of these examples show that if you call someone a contractor but treat them like an employee, you could be in hot water. Courts and labour boards don't just look at the words in your contract; they look at the actual day-to-day working relationship. If there's too much control and dependency, get ready for legal challenges, potential fines, or even back-pay obligations.