

## Is Work Performed by a Talent Agency Worker for a Client Insurable?



The payroll responsibilities of employers to make income tax, EI, CPP and other legally required source deductions from a worker's paycheck become more complex to apply when the person performing the work comes from an outside talent or employment agency. **Question:** Which, if any, of the companies is deemed the worker's employer—the talent agency or the client company? The answer depends on whether the work is the product of employment or independent contracting. Here's a scenario illustrating how these principles play out in real life.

### **Situation**

A talent agency furnishes models to clients who run trade shows and other corporate functions. The models, who have their own modeling careers outside the agency, pay the agency to find them gigs and to post their photos and bios in the agency's brochure and website. The agency offers each assignment it obtains to the model it feels is best suited for the job. The model can then accept or refuse the assignment. There's no written agreement between the models and the agency. All assignments are via verbal agreement. The models furnish their own wardrobe and do their own hair and makeup. The agency bills the tradeshow client an hourly fee for the model plus an agency fee. The model gets paid only after the client pays the agency—and after the agency deducts its fees.

### **Question**

**Who must withhold CPP contributions and EI premiums for the models?**

1. The talent agency because it's a "placement agency".
2. The trade show client.
3. Neither the talent agency nor the trade show client.
4. Both the talent agency and the trade show client.

### **Answer**

1. **Neither the agency nor the trade show client is required to withhold CPP contributions or EI premiums for the models.**

## Explanation

This scenario, which is based on an actual case, illustrates how courts determine how the income paid by one company to an individual who performs services to a company's client should be treated for payroll purposes. Whether the individual's income is pensionable/insurable depends on whether the individual is an employee or an independent contractor. The question of whether the models were employees or independent contractors was the key to the entire case. To make this determination, the court used the standard 4-prong test:

1. **Control** by either the agency or client over the model's work schedule would have suggested an employment relationship. In this case, the models could pick and choose which assignments they accepted.
1. **Ownership of tools** by the models would indicate that they were independent contractors. The models in this case did, in fact, own their own clothes and makeup.
1. **Risk of profit/loss:** An independent contractor relationship is more likely to be found when the worker has a financial stake in the work beyond just getting paid. The models in this case had such a stake because they didn't get paid until and unless the client paid the agency.
1. **Integration:** If the tasks carried out by the worker are integral to the employer or client's business, it suggests an employment relationship. The models in this case ran their own businesses and weren't integrated into the agency's or client's business.

The court ruled that the models in this case were independent contractors. And because the models weren't in an employment relationship with either the agency or the trade show client, neither business had to withhold CPP contributions and EI premiums. So, C is the correct answer [[Diana Williams Promotions Limited v. M.N.R.](#), 2005 TCC 695 (CanLII)].

## Why Wrong Answers Are Wrong

**A is wrong** because whether the agency is a placement agency would matter only if the work the models did was under an employment relationship. The issue then would be who was the employer—the agency or the trade show client? If the agency was found to be a “placement agency” (under Sec. 34(i) of the CPP and Sec. 6(g) of the Employment Insurance Regulations), it would be the employer and would have to deduct CPP contributions and EI premiums. But since the models were independent contractors, neither the agency nor the client had a placement agency relationship with them.

**B is wrong** because the court ruled that the models were independent contractors. The 4 prongs of the test don't always carry equal weight. In this case, the court said that the decisive prong was the “integration test.” The court ruled that the services the models performed weren't integral to the business of the agency or the client. So, there was no employment relationship with either entity.

**D is wrong** because even if the models were found to be employees, only one of the businesses—the agency or client—would have had the obligation to withhold, depending on which one was considered the employer.