

Legal Corner

Employment or Contractor Status and Rights

We are pleased to re-introduce the Legal Corner with Catherine Wilson from Golden Sloan Nash & Haber LLP Barristers & Solicitors (GSNH) exclusively for our Professional Coaches. Unfortunately, as a result of COVID, many sport organizations have had to furlough or terminate employees. We hope this article will assist you in determining your employment or contractor status and rights.

Are you an employee or an independent contractor?

This is important for a few reasons:

- **Salary Remittances** - Personal taxes, CPP, and EI will be withdrawn from a salary paid to an employee. There are no direct deductions from payments to a contractor and HST is payable for income over \$30,000/annum.
- **Termination of Services** - An employee is entitled to notice of termination or pay in lieu of notice of termination which can amount to many months of compensation following termination. A contractor will receive little to no notice of termination of services and no ongoing payments.
- **Tax Deductions** - An employee has very few tax deductions available against their salary. A contractor can take advantage of tax deductions for expenses necessary to perform their services, which can be significant.

In the absence of a properly drafted written contract, courts frequently ask the following five questions to assist in the determination of whether a worker is an employee or an independent contractor:

1. How much control does the payor have or exert over the worker's activities?

The more control the payor has or exerts over the day-to-day activities of a worker, the more likely it is a court will find that the worker is an employee.

2. Who owns the equipment or tools used by the worker?

If the worker supplies their own equipment (computer, tools, phone, etc.), this favours a finding that the worker is an independent contractor.

3. Does the worker have opportunity to profit or assume financial risk?

If the worker is paid a fixed fee and assumes little risk with little opportunity for further profit, the worker is likely an employee.

4. Can the worker perform services for other payors?

If the worker is not working exclusively for one payor and can work for other payors at the same time, the worker is more likely an independent contractor.

5. Does the worker have the freedom to hire helpers?

If not, this favours a finding that the worker is an employee.

This distinction between employee and independent contractor is especially important to the payor if there is a CRA review as the payor could be ordered to remit all the outstanding remittances for improperly identified workers for up to 3 years. It is also important on termination of the worker as an employee will have significant rights to extended termination pay.

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