

EMPLOYEE VS INDEPENDENT CONTRACTOR

The following information has been taken directly from the Employees Standards Website.

Determining if your coach is an independent contractor or employee:

In order to be an independent contractor, a person performing services has to be in business for themselves. Designating a person as an independent contractor does not decide this.

To help decide, various tests have been developed by the courts and applied by the Employment Standards Branch and the Employment Standards Tribunal. Not all elements of the tests apply in all situations.

The Act applies to those persons who are employees, but not to those who are independent contractors. A person who is an independent contractor is considered to be self-employed.

Tests to determine if your coach is an employee:

Control

- Is the person under the direction and control of another regarding the time, place, and way in which the work is done?
- Is the person hired, given instruction, supervised, controlled, or subject to discipline?
- Was the person told what to do, how to do it, and when to do it?
- Did the person have to do the work him or herself, or could that person give the work to someone else to do?
- Does the person perform work normally or previously performed by an employee?

The greater the degree of control, the greater the likelihood the person will be found to be an employee.

Payment

- Is the person paid regular amounts at set intervals?
- Does the person get paid regardless of customer satisfaction or customer payment?

These factors indicate an employment relationship.

In general, the more the party who pays for the service provided controls the supply of materials and tools and retains direction and controls of the activities, the more likely it is that the Director will find the relationship to be one of the employer/employee.

Agreement: The act of signing an independent contractor agreement does not necessarily create an independent contractor relationship. The actual work relationship determines if a person is an employee or independent contractor. Any agreement to waive employment standards entitlements is prohibited by the Act.

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Test to determine if your coach is an independent contractor:

Chance of Profit: Does the person have a chance of profit? If their income is always the difference between the cost of providing the service and the price charged for the service, the worker may be someone other than an employee.