



Lancaster, Brooks & Welch LLP
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Employment Contracts and Self-Employment



Accessibility and Convenience

Lancaster, Brooks & Welch LLP have offices in both St. Catharines and Welland which are conveniently located in the downtown core.

Regular office hours are Monday to Friday from 8:30am to 5:00pm.

We are happy to make appointments at other times to satisfy our clients' needs.

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Employers are seeking services from those other than in the capacity of employees, to reduce costs. This has led to layoffs and has forced workers to seek alternatives to traditional means of earning a living.

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The Employer-Employee Relationship

An employee typically enters into a contract of service for a fixed or indefinite term. If the parties do not specify a fixed term, it is assumed employment will continue until either party gives reasonable notice in accordance with legislation.

A contract that sets out a fixed term without a mutual option to renew, expires at the end of the specified term. Under a fixed-term contract the employer is responsible for the same statutory deductions and benefits as under the indefinite term contract.

The difference between the fixed term and indefinite term contract is the person hired under the former usually cannot be dismissed before the end of their contractual term without legal cause. If they are dismissed without cause, they are entitled to damages for the entire unexpired portion of the term.

What are the Characteristics of an Employment Contract?

Indications an employment relationship exists is where the employer has:

- Authority to select an individual for employment
- Ability to determine the payment of wages or other remuneration
- Right to control the employee with respect to the type, manner and timing of work
- Right to suspend or discipline the employee

Benefits of the Employer-Employee Relationship

The primary benefit to the employee is the protection provided by minimum standards or statutory rights through legislation governing employment relationships:
Employment Standards Act 2000, Ontario Human Rights Act, etc.

The Self-Employed Independent Contractor

Self-employment is a term used for people in business for themselves. They are commonly referred to as the independent contractor or consultant and typically enter into a contract, which is almost always for a definite period of time and the duties owed by the independent contractor are limited in nature. The independent contractor generally owes no obligations of confidentiality or loyalty to those receiving the services except a general duty of good faith.

Advantages of Self-Employment and Independent Contractor Status

For the company, there is no obligation to contribute to CPP and EI and it is unlikely the company will provide group benefits and statutory entitlements such as vacation pay, overtime pay and notice or severance pay.

Hiring self-employed independent contractors allows the company to maintain a more flexible workforce. It will owe no notice or severance obligations and may terminate the relationship without legal cause or reasonable notice, subject to specific terms of the agreement.

The self-employed independent contractor has the freedom to decide whom to work for, and when



and how to work. They are usually paid 20% to 40% more per hour than employees performing the same tasks. There are no tax deductions from weekly pay cheques, which means they can keep their money longer without having to turn it over to Revenue Canada. There are increased tax deductions, which must be viewed as reasonable in amount and must be expenses ordinarily incurred by the specific business.

Disadvantages to Self-employment and Independent Contractor Status

The self-employed independent contractor has no job security, entitlement to benefits or statutory rights such as overtime, vacation and notice or severance pay. They are not eligible for Employment Insurance benefits; they bear the risk of loss and they are personally liable for all debts and liabilities that arise during the course of the business.

The company has little or no control over a self-employed independent contractor. The company does not have the right to closely monitor the work or discipline the worker. The independent contractor does not owe the company any fiduciary responsibilities and the company has no rights to restrict the independent contractor's ability to work for competitors.

Legal Formalities Involved in Establishing Self-employment and Independent Contractor Status

It may be necessary for the self-employed independent contractor to obtain a license to carry on business. Municipal licenses may be required by electricians, plumbers, restaurants, taxi cabs, etc.

If a self-employed independent contractor decides to carry on business under a name other than their own, it must be registered with the Ministry of Government and Consumer Services.



Registration is generally for a period of five years and is renewable.

Determining Independent Contractor or Employee Status

The most common test covers the extent to which the company controls the performance of the individual's services; whether the person owns the tools and equipment used and whether they have a chance of profit or a risk of loss.

The factors must be viewed in the context of the whole of the various elements constituting the relationship. The more the person is under the control of the employer, the more likely they will be seen as an employee.

What Happens if Canada Revenue Agency decides that an Individual was really an Employee and not an Independent Contractor?

Regardless of the parties' intentions at the time they entered into an agreement, if it is found the relationship

Labour & Employment Law Group

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can be characterized as an employer-employee relationship, there are consequences to the hiring company. Various pieces of legislation make provisions for the consequences and penalties to be applied where an employer has failed to meet its obligations. Revenue Canada will assess the company for unpaid Canada Pension Plan contributions and Employment Insurance premiums – both the employer's and the employee's shares – as well as income tax which should have been withheld going back up to six years, plus interest and penalties up to 20% of the amount that should have been withheld and remitted.

Should a Self-employed Independent Contractor use a Written Agreement?

A signed agreement between parties may be of assistance in determining whether the individual is a contract employee or a self-employed independent contractor. A contract in writing that defines the relationship is not always determinative. Each administrative tribunal will apply its own criteria to make the determination.

A Final Note

At Lancaster, Brooks & Welch, we recognize the complexity involved with employment issues and starting a new business. We strongly recommend that individuals seek legal and accounting advice

at the outset to determine what structure is best. The lawyers in our labour and employment department are happy to answer any further questions, without obligation.

Employment Law Department

Leanne E. Standryk: Ms. Standryk is the senior partner of the Firm's Labour, Employment and Sports Law Department. She acts for a variety of employers in the private, charitable, not for profit and public sector. She is experienced in the full range of employment and labour issues including employment contract negotiation, terminations, workplace restructuring, labour relations, collective bargaining, wrongful dismissal, workplace privacy issues, occupational health and safety, human rights and human resource policy development, etc. In addition to her negotiation and counsel experience, Leanne provides assistance to our Corporate lawyers regarding labour and employment matters that arise during the purchase and sale of a business. Leanne also acts for several sports organizations regarding contract negotiation, athlete appeals and risk management. She has experience before the SDRCC and has acted as a panel member regarding appeals in amateur sport.

Civita M. Gauley: Vita is a Partner at Lancaster, Brooks & Welch. She was called to the Bar in 2012 and is a member of the Labour & Employment team. Through her focus on detail, positive outlook, motivation and energy, Vita offers her clients great skills and experience.

Emily V. Keene: Emily is a proud Niagara resident, having moved to the region at a young age. Emily was called to the Ontario Bar in June 2014 and joined Lancaster, Brooks & Welch. Emily is committed to providing excellent legal services, including understanding the legal issues clients face, offering proactive approaches for resolution, and advocating with strong legal writing and communication skills.



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