

Employee or Self-Employed Person?



Criteria used to determine a worker's status

A worker may have the status of an **employee** or a **self-employed person**. This folder outlines the criteria that Revenu Québec uses to determine a worker's status for **tax purposes**. Please note that other government departments or agencies may use different criteria to determine a worker's status.

The key factor in determining a worker's status is the nature of the relationship that exists between the worker and the work provider. In an employer-employee relationship, the person who pays the salary or wages must deduct amounts at source and make certain employer contributions, regardless of whether the contract of employment is written or verbal. A person who retains the services of a self-employed individual does not have such obligations.

In order to determine whether a worker is an **employee** or a **self-employed person**, the degree of subordination existing between the worker and the work provider must be assessed. Revenu Québec has proposed six main criteria for this purpose. These criteria, which are interrelated and must be considered as a whole, are

- subordination in the performance of work;
- the financial or economic criterion;
- ownership of tools;
- integration of the tasks carried out by the worker;
- the specific result of the work;
- the attitude of the parties with respect to the relationship.

The criterion of **subordination in the performance of work** is met if the work provider is in a position of authority with regard to the worker. For example, the work provider determines the amount of work to be accomplished, supervises the work and controls the worker's activities. Subordination is the most important criterion, and may be the crucial factor in determining whether a worker is an employee or is self-employed.

Where the work provider assigns the worker specific tasks, explains the work to be accomplished and the responsibilities to be assumed, and provides initial and advanced training, the worker generally has the status of an employee.

On the other hand, if the worker is self-employed, the work provider does not ordinarily determine work hours, location or methods. An individual who is self-employed can obtain help or hire a substitute to perform the task, and can offer his or her services to more than one client.



The **financial or economic criterion** may be used to determine the nature of the financial relationship between the work provider and the worker. In an employer-employee relationship, the employer covers the business's operating costs and assumes the financial risks; the employee does not assume any financial risk. On the other hand, a self-employed individual may make a profit or incur a loss, and is responsible for covering the operating costs of his or her own business.

The financial performance of the work provider's business does not directly affect the remuneration of an employee, who is also entitled to an annual vacation (or vacation pay) and to fringe benefits. Self-employed workers must pay their own expenses for food, clothing, transportation and lodging.

Ownership of tools, equipment or materials is also a criterion that may help determine the status of a worker. In an employer-employee relationship, the employer generally owns the tools, equipment and materials, provides everything necessary for the employee to carry out the work and covers the related operating costs. A self-employed worker ordinarily provides his or her own tools or equipment and covers the related operating costs.



The **integration criterion** should be considered from the worker's point of view. If the tasks carried out by the worker form an integral part of the activities of the employer's business, there is probably an employer-employee relationship. For example, a person who sells goods produced by a business is generally an employee if selling is one of the business's commercial activities. On the other hand, an outside consultant is self-employed if the services he or she renders to a business are not activities that the business normally engages in.

As a rule, an employee derives work income principally from the work he or she carries out for a single employer, whereas a self-employed individual carries out work for a number of clients.

The **specific-result criterion** is met if the worker's services are retained for the purpose of accomplishing a specific task and the worker is free to determine the method that will be used to achieve the results. If this is the case, the worker is generally self-employed. Once the specific task provided for in the contract is completed, the business relationship ends.

The **attitude of the parties with respect to the relationship** is a criterion that touches on various aspects of the agreement between the two parties with regard to work conditions. The following are examples of factors that may be taken into consideration:

- the fact that the employer pays the contribution to the Commission de la santé et de la sécurité du travail (CSST) on the salary or wages paid to the worker;
- the overall interpretation of the employment contract, and its terms of renewal;
- the worker's eligibility for the employer's group insurance plan;
- the payment of severance pay.

For further information on these criteria, you may consult interpretation bulletin RRQ. 1-1/R2, *Status of Workers*.

Performing, recording and film artists

When an artist gives performances under an employment contract, his or her employer has the same fiscal obligations as other employers subject to Québec legislation. However, artists may choose to be considered self-employed persons in a given year if they have entered into several engagements with one or more producers in that year and work in a field of artistic endeavour covered by the *Act respecting the professional status and conditions of engagement of performing, recording and film artists*. Where an artist resident in Canada informs a producer that he or she has chosen to be considered a self-employed person, the producer has none of the fiscal obligations an employer would have with regard to the artist.

Revenu Québec has published two interpretation bulletins on this subject:

- Bulletin IMP. 1015-5 is entitled *The Tax Obligations of a Person Who Employs an Artist Working in One of the Fields of Artistic Endeavour Covered by the Act respecting the professional status and conditions of engagement of performing, recording and film artists (R.S.Q., c. S-32.1)*.
- Bulletin IMP. 80-3/R4 is entitled *The Fiscal Status of an Artist Working in One of the Fields of Artistic Endeavour Covered by the Act respecting the professional status and conditions of engagement of performing, recording and film artists*.

Importance of determining the correct status

An individual who considers himself or herself self-employed or who is considered to be self-employed by the work provider may nonetheless be considered an employee under the criteria applied by Revenu Québec. Employers sometimes encourage employees to become self-employed; however,

the fact that both the employer and the employee are in favour of such a change does not mean that Revenu Québec will consider the individual in question to be self-employed.

Revenu Québec may, in the course of an audit, determine that a worker identified as a self-employed person is actually an employee. The employer will then be required to pay the contributions that should have been remitted with respect to the employee.

Help in determining a worker's status

If an employer and a worker do not agree on the worker's status, they may ask Revenu Québec for a ruling. The following forms must be filed:

- form RR-65-V, *Application for Determination of Status as an Employee or a Self-Employed Worker*
- form RR-65.A-V, *Questionnaire to Determine the Status of an Employee or a Self-Employed Person*

The Canada Revenue Agency (CRA) publishes a pamphlet entitled *Employee or Self-Employed?* The pamphlet (RC4110), intended for employers and workers, contains a questionnaire that covers some of the criteria outlined in this folder.

Revenu Québec is not bound by decisions concerning a worker's status if the decisions are rendered by other government bodies for purposes of laws other than those administered by Revenu Québec.

For further information, contact the Revenu Québec office in your area.

This publication is provided for information purposes only. It does not constitute a legal interpretation of the *Taxation Act* or any other legislation.

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Information service for persons with a hearing impairment

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We invite you to visit our Web site at www.revenu.gouv.qc.ca.

Vous pouvez vous procurer la version française de cette publication en demandant le document *Travailleur autonome ou salarié ?* (IN-301).

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