



Subject	DETERMINING EMPLOYEE / EMPLOYER RELATIONSHIPS (Contractors) (formerly titled "3.01 Determining Employee / Employer Relationships")
Procedure Section	12 Miscellaneous
No.	12.00
Exempt Employment Policy References	
Collective Agreement References	
Forms & Other Reference Material	
Status of Approval	Approved 27-May-2013 Vicki Pannell

PREAMBLE:

It is incumbent upon Okanagan College to determine whether or not an employee-employer relationship exists or whether an individual should be paid as a contractor. The following guidelines are intended to assist in this determination. The originator should first contact Financial Services to ensure the relationship has been defined correctly.

PROCEDURE:

1. Under common law, the relationship of employer and employee generally exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what will be done, but how it will be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge is also a factor indicating that the person possessing that right is an employer. Another factor characteristic of an employer, but not necessarily present in every case, is the supplying of tools and the providing of a place to work, to the individual who performs the services.
2. While there is no single test that is decisive to determine whether an individual is an employee or an independent contractor, the following tests have evolved and can serve as guidelines:
 - (i) Control - In an employer/employee relationship, the employer has the right to control the employee's method of doing the work. An independent contractor, on the other hand, works independently to achieve a specified result.
 - (ii) Ownership of Tools – In an employer/employee relationship, the employer generally supplies the equipment and tools required by the employee. In addition, the employer covers the costs relating to their use: repairs, insurance, transport, rental and operation (eg. fuel). In an independent contractual relationship, workers generally supply their own equipment and tools and cover costs related to their use.

- (iii) Rights of Payee – Where the payee has the right to sub-contract the work, the payee is likely a contractor. Where the payee has the right to accept or refuse work, they are likely a contractor.
- (iv) Chance of Profit/Risk of Loss - Where there is financial risk, opportunity to profit, or the possibility of loss and responsibility for costs, an individual may be viewed as an independent contractor. Where these elements do not exist - no financial risk, no chance of profit, a fixed salary is paid and there are few expenses not reimbursed - there is an employment relationship.
- (v) Integration – Where the worker integrates the payer’s activities to his own commercial activities, a business relationship probably exists. The worker is acting on his own behalf, he is not dependent on the payer’s business and he is in business for himself. Where the worker integrates his activities to the commercial activities of the payer, an employer-employee relationship probably exists. The worker is acting on behalf of the employer, he is connected with the employer’s business and is dependent on it.