

## Client Services Procedure Manual

**Procedure: 102.00**  
**Subject: Independent Operator Determination**

### 102.01 Introduction

This procedure explains how WorkplaceNL determines an individual's status as either a worker or an independent operator for the purposes of the Workplace Health, Safety and Compensation Act (the Act).

In most working relationships there is a clear employer-worker relationship. However, in some instances it is less obvious whether the person is a worker or an independent operator. Different rights and responsibilities apply under the Act, depending on whether an individual is considered a worker or an independent operator.

WorkplaceNL will consider the details of the relationship between an individual service provider and the principal in order to determine whether the service provider is a worker or an independent operator. This determination is made in the context of the Act, and any decisions made in relation to other legislation have no bearing on this determination.

### 102.02 Determining Status as a Worker or Independent Operator

Section 19 of the Act gives WorkplaceNL the exclusive jurisdiction to determine whether an employer-worker relationship exists. WorkplaceNL requires completion of an Independent Operator questionnaire by the individual when determining worker or independent operator status. In extenuating circumstances, an employer may complete the questionnaire if the individual cannot be contacted. Questionnaires are available on WorkplaceNL's website at [workplacenl.ca](http://workplacenl.ca). WorkplaceNL may require additional follow up to the questionnaire.

If the individual has no workers of their own, an independent operator determination will be made within WorkplaceNL's Assessment Services Department.

Disputed decisions may be appealed, subject to WorkplaceNL's Internal Review Process. The individual disputing a decision must request a copy of the written decision from the Assessment Services Department. The Internal Review Process is outlined in Policy AP-01, Internal Review. A Request for Internal Review must be registered in writing within 30 days of the date of the written decision. Policy AP-01 and the Request for Internal Review form are available on WorkplaceNL's website at [workplacenl.ca](http://workplacenl.ca).

Section 41 of the Act defines an independent operator as being neither an employer nor a worker. Four tests have evolved in the common law decisions of the court. It is noted that while no single test is conclusive in determining whether an individual is a worker or an independent operator, the four tests, outlined below, do provide some illustration as to the general differences between a worker and an independent operator:

## **1. Organization Test**

This test examines whether an individual provides services that are an integral aspect of the principal's regular business activity. When the success or continuation of a business depends upon the performance of those services, there is likely a right to exercise a certain amount of control by the owner of the business and would indicate an employer-worker relationship. Conversely, where an individual provides services that are not part of the principal's regular business activity, it is a greater indication that the individual is an independent operator.

## **2. Control Test**

Control is the ability, authority or right to exercise control of not only what is to be done, but how it is to be done. When evaluating the working relationship, whether or not the right to control exists in the relationship, rather than whether control is actually exercised is examined. This is especially true when examining the relationship for certain professionals who possess specialized training and expertise. If such control exists, then an employer-worker relationship likely exists. Indications of control include, but are not limited to: method of payment, type of supervision and furnishing and/or financing of equipment.

## **3. Economic Reality Test**

This test examines the degree of financial risk and ultimately who bears the most risk in the relationship. Four economic factors from which an inference as to the nature of the relationship can be drawn are:

- control;
- ownership (of tools and equipment);
- opportunity for profit; and
- risk of loss.

A worker normally does not have a significant investment in the tools, materials, equipment and facilities of the business. While their remuneration may vary, they generally do not incur fixed expenses in the performance of their services, and are therefore not subject to the risk of profit and loss. On the other hand, an independent operator will normally incur fixed expenses while fulfilling their contracts and must manage those expenses to maximize profitability and minimize losses.

Applying the economic reality test, if the individual supplies no funds, takes no financial risks and has no liability then it is likely that the individual is a worker.

## **4. Specific Result Test**

The specific result test examines whether the individual makes their services available on an ongoing basis, or whether services are made available to achieve a specific objective. An employer-worker relationship usually exists where an individual provides their services to an employer during a given period of time without reference to a specified objective. An

independent operator will normally perform services related to a specific objective where it is not intended to form a continuous relationship.

**102.03 Characteristics of Workers and Independent Operators**

The following list compares worker/independent operator characteristics in terms of the tests discussed above. The statements provided are examples that can be used to indicate whether an individual is a worker or an independent operator. This list is not exhaustive of factors that may be considered in determining status. The statements on the left are more characteristic of the behaviour or situations of workers; while those on the right characterize the behaviour or situations of independent operators. No one statement determines an individual's status.

<b>Sample Characteristics of Workers and Independent Operators</b>		
	<b>Worker</b>	<b>Independent Operator</b>
<b>Continuing Need for Type of Service (Organization)</b>	Company has a continuing need for the type of service that the individual provides	Company does not have a continuing need for the type of service that the individual provides
<b>Hours of Work (Control)</b>	The hours and days of work are determined by the company or through negotiation with the company	Individual determines their own hours
<b>Training/Supervision (Control)</b>	Trained and/or supervised by an employee of the company  Required to attend meetings and follow specific instructions, adhering to company protocol	Specific training is not provided  Use their own methods and are not required to follow company instructions in the performance of tasks
<b>Location where Work is Performed (Control)</b>	Company owns and/or controls the worksite	Works away from the company's premises, using own office space, desk and telephone
<b>Right to Sever Relationship (Control)</b>	Either the individual or the company can end the work relationship with notice according to law, without legal penalty	Agrees to complete a specific job and is responsible for its satisfactory completion; otherwise legally obligated to pay for damages or loss of income sustained by the company due to the individual's failure to complete the work satisfactorily
<b>Working for More Than One Firm at a Time (Control)</b>	Usually works for one company	Usually provides services to multiple clients
<b>Serving the Public</b>	Makes services available on behalf of, or	Maintains own business telephone and

<b>Sample Characteristics of Workers and Independent Operators</b>		
	<b>Worker</b>	<b>Independent Operator</b>
<b>(Economic Reality)</b>	As a representative of the company	Is listed individually in business directories; personally advertises via various media
<b>Billing for Services (Economic Reality)</b>	Clients invoiced on behalf of the company	Clients invoiced on behalf of the individual
<b>Method of Payment (Economic Reality)</b>	<p>Paid by the company in regular amounts and/or at stated intervals</p> <p>Company decides the amount and/or manner of payment</p> <p>Usually reimbursed for expenses incurred related to employment</p>	<p>Paid a pre-determined amount for the job</p> <p>Negotiates amount and method of payment with the company</p> <p>Expenses incurred in relation to the job may be included in negotiated amount</p>
<b>Use of Equipment/Supplies (Economic Reality)</b>	Uses equipment and supplies that are the property of and are provided by the company	Provides and finances their own equipment and supplies in order to complete the job
<b>Specified Services (Specific Results)</b>	<p>Works hourly on an ongoing basis at a specified pay rate</p> <p>Company has an ongoing need for the type of service that the individual provides</p>	Provides a specific service for a specified price regardless of how much time is involved

**102.04 Coverage for Workers or Independent Operators**

If WorkplaceNL determines an individual to be a worker, they are entitled to benefits under the Act. The employer must report earnings and pay assessments related to this employee.

Independent operators are not mandatorily or automatically covered for workplace injuries under the Act. Once it is determined that the individual is an independent operator, the individual may apply for optional personal coverage. Also, the principal is not responsible for paying assessments or compensation benefits related to the independent operator. If the independent operator has not purchased optional personal coverage he/she may potentially sue the principal in the event of an injury, as the statutory bar does not prevent legal action in such a case.

**Reference:** Workplace Health, Safety and Compensation Act, Sections 19(l) (j), 41, and 120  
Policy AP-01, Internal Review

**Amendment History**

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