



Canada Labour Code Misclassification of Employees

Labour Program

Presented to
Labour Program Open House
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Overview

- Definitions
- Assessing the Employer-Employee Relationship
- Classification under the *Canada Labour Code* and status under the *Income Tax Act*
- Addressing misclassification
- Compliance and Enforcement Flowchart
- Labour Program contacts and links



Definitions



Definitions

- Employer:
 - A person who employs one or more employees
 - Any person who acts on behalf of an employer
 - An employers' organization
- Employee: a person employed by an employer
- Workplace: any place where an employee is engaged in work for their employer



Definitions

- **Contract of service: Employer–employee relationship**
 - Contract in which a person (employee) undertakes to do work for remuneration, according to instructions and under direction or control of another person (employer), for limited or indeterminate period of time
- **Contract for service: Business relationship**
 - Contract in which a person (independent contractor or service provider) makes a commitment to another person (client) to carry out material or intellectual work or to provide a service for a set price or fee and with no relationship of subordination

*Definitions are taken from case law. Tests described below.



Assessing the Employer- Employee Relationship



Why is the employer-employee relationship important?

- When an employer–employee relationship exists, labour standards apply, such as:
 - Hours of work, minimum wage, vacation pay, holidays, etc.
 - Leave from work when sick or to take care of a critically ill family member, etc.
 - Maternity and parental leave
 - Protection from unjust dismissal and ability to make a complaint if you haven't received earned wages
 - Occupation Health and Safety protections
- This is **important** for all employees to know when they accept a job in a **federally** regulated industry



How is the employer-employee relationship determined?

- Control Test
 - Presence or absence of control by manager or supervisor
- Four-fold Test: *Whose business is it?*
 - Control
 - Ownership of the tools
 - Chance of profit
 - Risk of loss
- Integration Test



Employer-Employee Relationship Questionnaire

- A detailed questionnaire is sent to the parties to obtain information about the employment relationship
- The responses provided (together with all other relevant information) are assessed against the relevant legal tests
- Examples from the questionnaire sent to the employer:
 - Did the worker have authority to decline work?
 - Did you provide the equipment/vehicle required for the performance of the worker's work?
 - If road transportation, did the worker own the operating authority to cross borders?
 - Was the worker permitted to perform similar work for others while working for you?



Employee Characteristics

- Worker:
 - Works exclusively for payer and must perform services
 - Regularly reports to payer's workplace
 - Paid vacation pay
- Payer:
 - Provides tools and controls duties (whether exercised or not)
 - Sets working hours
 - Pays salary or hourly wage and pays expenses
 - Offers pension and group benefits



Independent Contractor Characteristics

- Worker:
 - May work for other payers and may accept or reject work
 - Provides own tools and may hire someone else to do job
 - Sets own working hours and pays own expenses
 - Decides how task is completed
 - Submits invoice to payer for payment
 - Paid by job on predetermined basis
 - No vacation pay, no overtime pay
 - Not permitted to participate in payer's benefit plans



Classification under
the *Canada Labour
Code* and status under
the *Income Tax Act*



Canada Labour Code v Income Tax Act

- For the *Canada Labour Code*, a worker is either an employee or is not an employee. If they are not an employee, they are considered independent contractors.
- An employee, who has full labour standards rights under the *Canada Labour Code*, may have a separate classification status for the purposes of the *Income Tax Act*: employee or [personal service business](#).
- Given the two Acts, there are two possible employment relationships:
 - Traditional employer – employee relationship: for both the *Canada Labour Code* and the *Income Tax Act*, the worker is treated as an employee.
 - Incorporated employee relationship: for the *Canada Labour Code*, **labour standards apply**, and for the *Income Tax Act*, the personal service business requirements apply to both the employer (payer) and employee.
- Where there are questions of employment status, the Labour Program and the [Canada Revenue Agency](#) will make independent determinations for their respective Acts: the *Canada Labour Code* and the *Income Tax Act*.



Addressing Misclassification



What is misclassification?

Misclassification occurs when an employer does not consider, nor treats a worker who is an employee, as an employee in order to avoid their rights and obligations under the Code.



How is misclassification addressed?

After an investigation of a complaint or inspection of a workplace, if misclassification is found:

- Employers are informed of the misclassification through counselling sessions and are provided with information to correct their practices.
- Employers may be issued an Assurance of Voluntary Compliance (AVC) that outlines the corrective measures they will take to address the misclassification.

An employer may be subject to further enforcement action, if:

- corrective measures are not implemented, and
- there is evidence that non-compliance continues

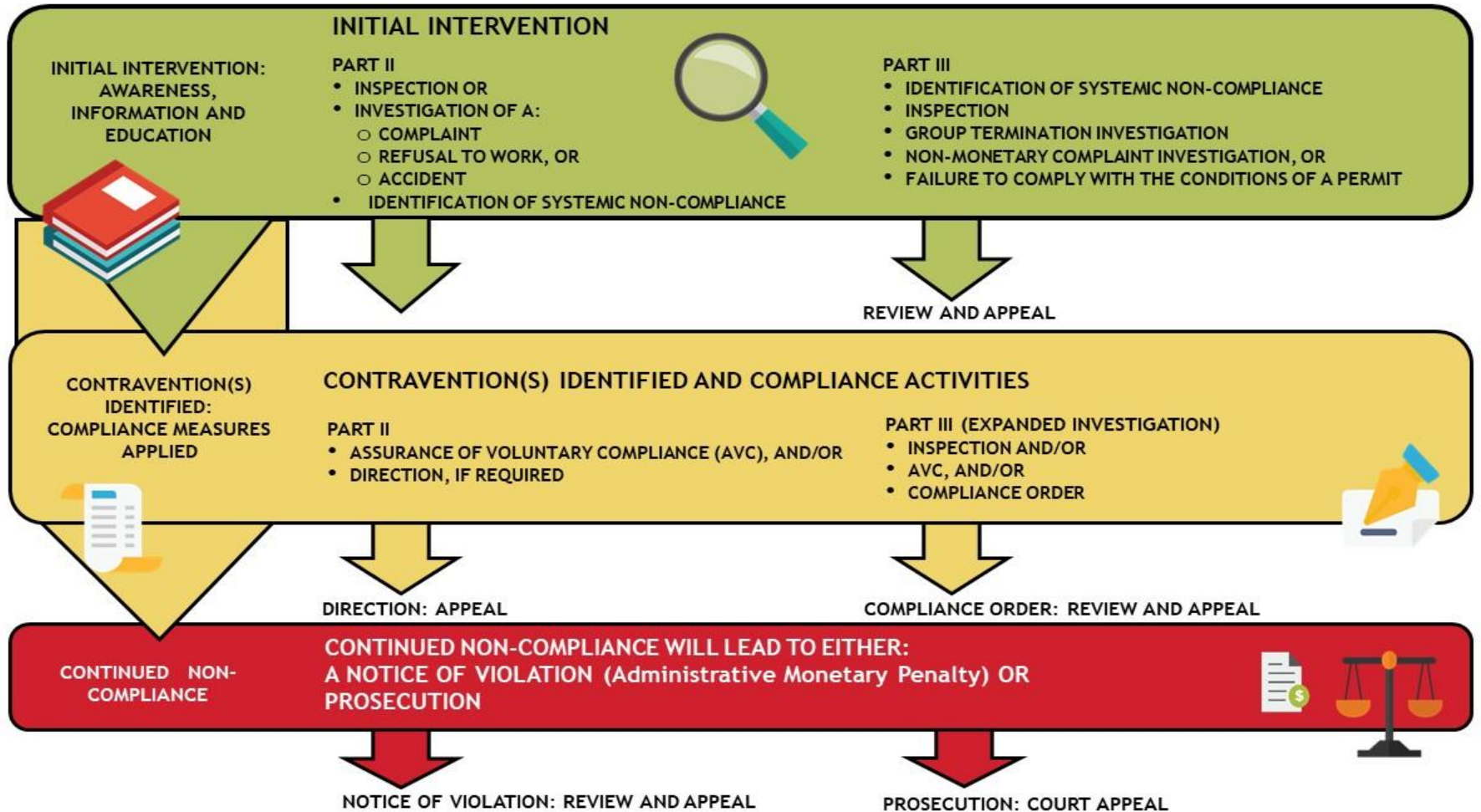
Further enforcement actions may include:

- a compliance order
- an Administrative Monetary Penalty (AMP), or
- publicly naming the employer.

Intent to misclassify employees may be established after an employer has been counselled and continues to misclassify employees.



Compliance and Enforcement Flowchart



Labour Program Contacts and Links

For further questions and information:

☎ Toll-free: 1-800-641-4049

✉ Email: NA-ERO-GD@labour-travail.gc.ca

Supporting documents:

- [Determining the employer/employee relationship](#)
- [Misclassification](#)
- [Administrative Monetary Penalties](#)

