



Employees and Independent Contractors in Ontario: Key Differences

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For clients seeking to expand in Ontario, understanding the differences between employees and independent contractors is crucial to ensuring that all legal obligations are satisfied for each type of worker. Employees' rights are governed by Ontario's *Employment Standards Act, 2000*. Independent contractors, however, are generally not covered by employment standards legislation. As a result, the statutory protections and minimum entitlements that apply to employees typically do not extend to independent contractors.

The table below has been prepared to provide a quick comparison of answers to common employment law questions for these two types of workers.

Aside from the protections and entitlements that differ, there are several notable differences in the relationship between a company and an employee and between a company and an independent contractor. These include, but are not limited to, the level of control the company maintains over working conditions, the exclusivity of the relationship and the financial risk taken by the worker or service provider.

Whereas employees are often beholden to reasonable control and direction by the employer, including terms and conditions of work such as location, scheduling, hours of work, and the way in which work is completed, independent contractors should be subject only to limited control, such as determining deadlines for delivery of assignments or completion of projects/tasks. They are otherwise largely able to exercise their discretion over how, when and by whom the work is performed, as well as the allocation of responsibilities.

Similarly, whereas employees, particularly full-time employees, commit to faithful and loyal service to one company, independent contractors should be able to seek alternate and additional work from other potential clients, including potential competitors. To that end, employees will generally receive set compensation, such as a salary, hourly wage, commission or bonus, paid based on the labour provided. Independent contractors, by contrast, are typically paid per task or deliverable, provide their own tools and do not become dependent on an employer as the exclusive or predominant source of income.

The hallmarks of an independent contractor align with a business-oriented approach to delivering a service or product. While a contractor may contribute to the operations of one or several large companies, they are ultimately in business for themselves.

While the contract between the company and the worker will be the starting place for any analysis of the worker's classification, it is not ultimately determinative. Courts look beyond the contract and consider the actual characteristics of the working relationship. As a result, even where a worker is subject to an independent contractor agreement, if the character of their work does not align with what would ordinarily be viewed as an independent contractor engagement, the individual can be classified as an employee or a dependent contractor. Dependent contractors

are individuals who are economically dependent on the party with whom they have contracted. A court or tribunal may determine that a dependent contractor has, or should have had, the protections granted to employees pursuant to the *Employment Standards Act, 2000* and at common law.

We are happy to assist with your expansion. When looking to expand your workforce, it is important to consult experienced counsel who can assist and advise on the structure best suited for your needs. If you have questions about the information contained herein, or require further information on a topic not addressed, please do not hesitate to contact us.

Category	Question	Employees	Independent Contractors
Minimum Wage	What is the minimum wage in Ontario, Canada?	Effective October 1, 2026, the minimum wage is \$17.95 per hour. ¹	Independent contractors are not entitled to minimum wage.
Benefit Coverage	Is benefit coverage for workers mandatory?	No – employers are not legally required to offer private health insurance benefits to employees.	Independent contractors are generally responsible for having their own insurance coverage.
Termination	Do employers need a reason to terminate a worker?	No – terminations can be processed without a reason (except for discriminatory reasons) upon the provision of working notice of termination or pay in lieu of notice.	Depends – the requirements for terminating an independent contractor will vary depending on the contract between the employer and the independent contractor.

¹ [Minimum wage | Your guide to the *Employment Standards Act* | ontario.ca](#)

Notice of Termination	Does “at-will” employment exist in Canada?	No – while Canadian law does not recognize “at-will” employment, a well-drafted employment agreement can mirror “at-will” employment by limiting termination notice entitlements to only statutory notice or pay in lieu of notice, which tend to be relatively modest. Absent such an agreement, employees are entitled to substantial amounts in respect of notice pursuant to the common law. Statutory notice is based on an employee’s length of service and, broadly speaking, is roughly one week per year of service up to a maximum of eight weeks. There is an additional payment of approximately one week per year of service that is owed on termination to an employee who has more than five years of service and the employer has a global payroll of at least \$2.5 million or severs the employment of 50 or more employees within a specific time period due to a business closure.	Depends – the requirements for terminating an independent contractor will vary depending on the contract between the employer and the independent contractor.
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Sick Days	Are workers entitled to paid sick time?	No – employees are entitled to three unpaid sick days annually due to personal illness, injury or medical emergency.	No – independent contractors are not entitled to sick days as they are not entitled to rights under the <i>Employment Standards Act, 2000</i> .
Rest Periods	Are there mandatory eating periods for workers?	Yes – a 30-minute meal break is required after an employee has worked for five consecutive hours. Meal breaks are unpaid unless otherwise agreed to.	No – independent contractors are not entitled to rest periods as they are not entitled to rights under the <i>Employment Standards Act, 2000</i> .
Overtime	Are workers entitled to overtime pay?	Yes – for every hour worked beyond 44 hours in a work week, employees must be paid 1.5 times their regular rate of pay. There are several narrow statutory exemptions to overtime pay, including for managerial employees, IT professionals and select salespersons. Overtime exposure can be managed through the creation of “averaging agreements,” which modify how overtime is calculated.	No – independent contractors are not entitled to overtime pay as they are not entitled to rights under the <i>Employment Standards Act, 2000</i> .

Vacation	Are workers entitled to minimum vacation time and pay?	Yes – for employees with fewer than five years of service, a minimum of two weeks of vacation time is required. For employees with more than five years of service, a minimum of three weeks of vacation time is required.	No – independent contractors are not entitled to vacation pay as they are not entitled to rights under the <i>Employment Standards Act, 2000</i> .
Public Holidays	Are workers entitled to certain public holidays?	Yes – employees are entitled to nine defined public holidays. Most employees are entitled to take these days off work and be paid statutory public holiday pay. However, an employee may agree to work on a public holiday and receive public holiday pay, plus an enhanced payment required by statute known as premium pay, or may work for their regular wages on the public holiday and receive a substitute holiday for which they receive public holiday pay.	No – independent contractors are not entitled to public holidays as independent contractors are not entitled to rights under the <i>Employment Standards Act, 2000</i> .

Method of Payment	How is the worker compensated?	Employees are compensated by way of wages, ordinarily paid through payroll which is subject to deductions for Employment Insurance and Canada Pension Plan contributions.	Independent contractors submit invoices to be compensated by way of fees rather than wages. Their compensation is not subject to deductions for Employment Insurance and Canada Pension Plan contributions but is often subject to Harmonized Sales Tax (HST).
Worker's Compensation	Are workers entitled to Worker's Compensation under Ontario's <i>Workplace Safety and Insurance Act, 1997 (WSIA)</i> ?	Yes – provided that an employee is employed by an employer who works in an industry specified by the WSIA in Ontario Regulation 175/98.	Possibly – independent contractors who work in the construction industry are considered to be workers who are entitled to worker's compensation. ²

Have more questions about expanding into Canada? Please [click here](#) or scan the following QR code to access Aird & Berlis LLP's Market Expansion Dashboard, your one-stop-shop for market expansion resources:



² [Who is covered by the Act? - Office of the Worker Adviser](#)

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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.

Fiona is pleased to offer a multitude of resources answering often-asked questions about expanding into Canada, including [this video](#) and [this one-page guide](#), all of which can be found on the [Market Expansion Resources Dashboard](#).



Michael Horvat

Partner

Michael is a member of the firm's Workplace Law Group. His practice focuses on all aspects of labour and employment law in both the federal and provincial jurisdictions. He advises employers in a number of industries, including manufacturing, transportation, retail, electrical distribution, construction and financial services, on various matters, including employment standards, human rights, discipline, discharge, union certification, grievances, wrongful dismissal, executive employment matters and transactions, as well as general labour and employment law issues.

Michael represents employers before the courts and administrative tribunals, such as the Ontario Labour Relations Board, the Ontario Superior Court of Justice, the Ontario Divisional Court, the Ontario Court of Appeal, the Grievance Settlement Board, the Canadian Railway Office of Arbitration, the Ontario Employment Standards Branch, the Ontario Workplace Safety and Insurance Board and in grievance arbitration and mediation.

**Patrick Copeland**

Partner

Patrick has significant experience in all aspects of commercial litigation, including contractual disputes, shareholder disputes, class actions, employment and labour matters and intellectual property law. He has acted as counsel in trials, applications, appeals, arbitrations and various types of motions, including for urgent injunctive relief. Patrick also has particular expertise in professional discipline proceedings having previously acted as Discipline Counsel for the Law Society of Ontario.

Patrick has argued before the Supreme Court of Canada, and has appeared at every level of court in Ontario, as well as every level of the Federal Court, in addition to various administrative boards and tribunals.

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Bardia is a member of the firm's Workplace Law Group. He advises on employment and labour-related matters, including comprehensive policies and training, and issues within the workplace. Bardia also has experience in dispute resolution matters heard before the Superior Court, the Divisional Court and the Court of Appeal. His clients include employers in unionized and non-unionized workplaces, as well as sporting organizations and player associations.

Bardia joined Aird & Berlis as an associate after serving as a legal trainee and summering at the firm.

Disclaimer: This article offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.