



A Guide for Employers on
**Employees &
Independent Contractors**

Ontario

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A Guide for Employers: Employees & Independent Contractors

What's the Difference?

When employing employees and independent contractors, employers in Ontario must be aware of their responsibilities towards these two different types of workers. This guide will give an overview of common misconceptions when classifying workers as independent contractors and will help employers avoid common mistakes.

Ontario's Employment Standards Act (ESA) governs most small businesses in the province and applies to full-time, part-time, temporary and permanent employees. Independent contractors are not governed by the ESA, however, which is why employers need to know how to classify their employees correctly.

Independent contractors do not have the same entitlements as employees under the ESA. A common mistake employers make is misclassifying employees as independent contractors, and not providing them with their entitlements.

Simply agreeing with an employee that they are an independent contractor does not necessarily make them one. Continue reading to learn how to correctly classify an independent contractor.

Definition of "Employee"

Under the ESA, employees are entitled to basic employment standards such as minimum wage, vacation pay, termination pay and leaves of absence. An employee is defined in the ESA as:

A person, including an officer of a corporation, who performs work for an employer for wages; a person who supplies services to an employer for wages; a person who receives training from a person who is an employer, as set out in subsection (2); or a person who is a homemaker; and includes a person who was an employee.

Beyond this definition an employee is someone who is provided tools, equipment, uniform or materials by their employer, who cannot subcontract their work, who is told what work to do and how to do it by their employer, and whose employment regulations for their duties, pay, vacation and location are determined by their employer.

Definition of "Independent Contractor"

Independent contractors are not considered employees and are, therefore, not protected by the ESA. A worker may be defined as an independent contractor if some of the following examples apply:

- They own and are responsible for some or all the tools and equipment they use for their work;
- They can subcontract some of their work;
- They can turn a profit or lose money from their work; and

- You can end their contract but cannot discipline them.

Common Misconceptions

The following are some common factors that are not, on their own, enough to determine that a worker is an independent contractor:

- They have agreed to be an independent contractor
- They submit invoices for payment
- They deduct CPP, EI or taxes from their pay
- They drive their own vehicle

What if a worker is found to be an employee?

If a worker is found to be an employee rather than an independent contractor, the business may face serious consequences. The employer will be obligated to provide them with any entitlements they haven't yet been provided, including minimum wage, holiday pay, vacation pay, overtime pay and termination pay.

What are the powers of the Ministry of Labour?

The Ministry of Labour has wide-ranging powers when it receives a claim from a current or former worker. The Ministry can investigate complaints

of misclassification, inspect records, issue payment orders, and fine employers for contravening the ESA.

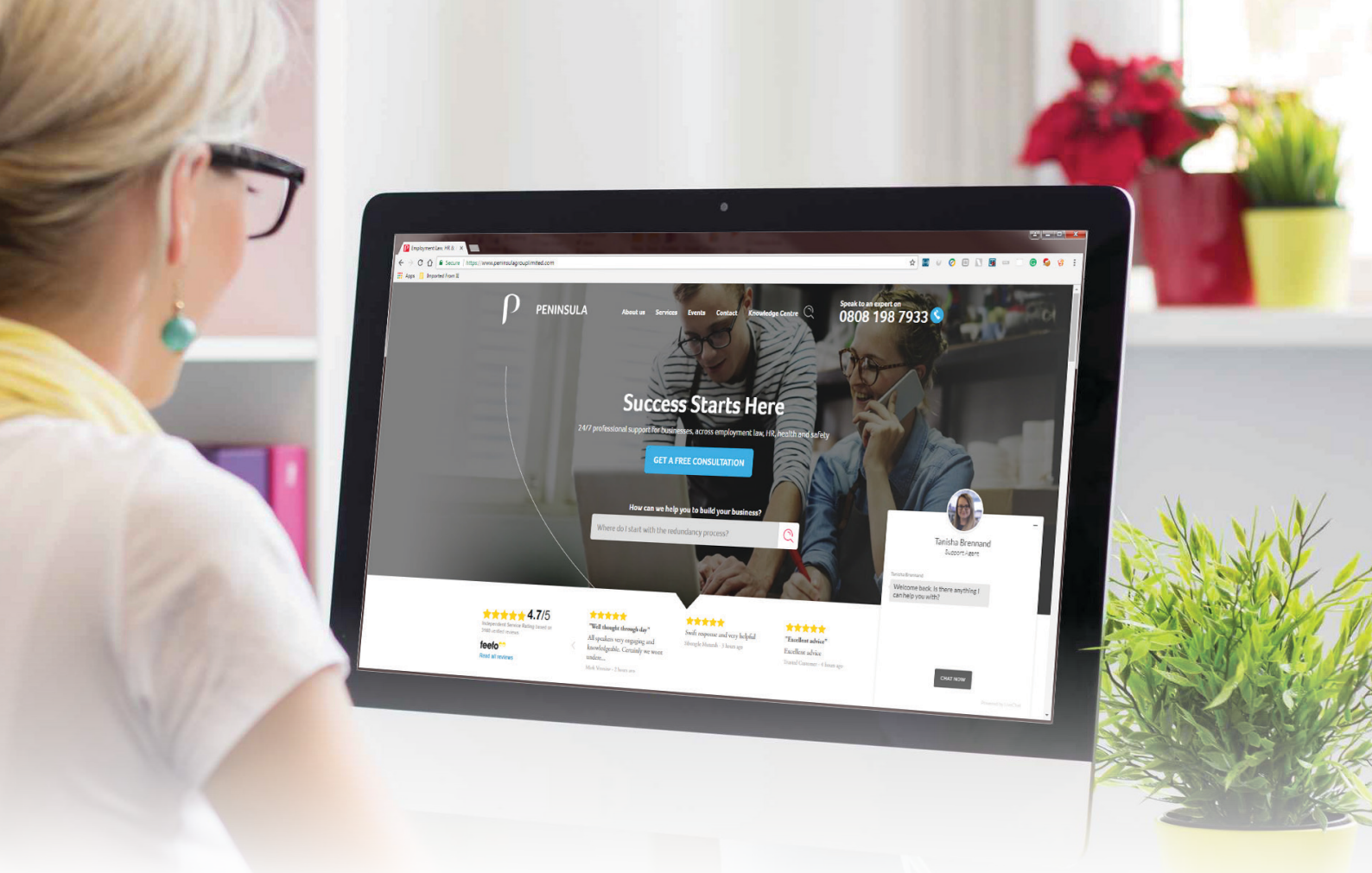
Learn More

If you have questions about the differences between an employee and independent contractor, the Ministry of Labour, or the Employment Standards Act, call Peninsula today. We are dedicated to providing small business owners with HR support.

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