

TABLE 1
Determining Self-Employed versus Employee

EXCERPTS FROM THE CANADA REVENUE AGENCY 2008 RC 4110 Employee or Self-Employed? Guidelines for all provinces except for Quebec			Canadian Physiotherapy Association interpretation to physiotherapy
CRA FACTORS FOR EMPLOYMENT STATUS	EMPLOYEE	SELF-EMPLOYED	INTERPRETATION TO PHYSIOTHERAPY
STEP 1			
Intention of working relationship	Contract of service (COS)	Contract for services (CFS)	Two parties may have different understanding of what this means. The intention must be clear to all involved. The chosen status must be reflected in the actual working conditions as well as written in the contract. As an owner, there must be a difference in the ways self-employed physiotherapists and your employees are managed.
STEP 2			
Degree of control	<ul style="list-style-type: none"> -Subordination -Results & Methods of Work -Method & Amount of Pay -Requires permission to work for others at same time -Assigned jobs -Receives training & direction from payer -Payer has final word 	<ul style="list-style-type: none"> -Works independently -No supervision -May work for different payers at same time -Free to work when and for whom -Able accept or refuse work from payer -Does not present a degree of loyalty, security, subordination, or integration 	<p>Self-employed physiotherapists must have entire control over their work. The clinic owner can not insist on treatment of a certain number of patients, or in a certain manner.</p> <p>Self-employed physiotherapists may work at various clinics simultaneously even if the clinics are in close proximity. If both parties agree, a non-competition clause can be included, but it is often not enforced by the courts. The courts hold that a non-solicitation clause is sufficient to protect the owner.</p> <p>Owners should also not conduct performance appraisals</p> <p>Self-employed physiotherapists may not access the clinic's benefits such as healthcare/dental, courses/training, business cards, voicemail, etc.</p> <p>Bonuses are also more indicative of a COS relationship.</p>
Tools and Equipment	<ul style="list-style-type: none"> -Payer supplies tools and equipment -Responsible for repair, maintenance, insurance -Reimburses worker if they supply tools -Payer retains right of use 	<ul style="list-style-type: none"> -Provides tools and equipment -Worker retains right of use -Supplies own workspace and maintenance of space and tools 	<p>Self-employed physiotherapists must own their own tools OR to have a rental/lease agreement for the use of the clinic's equipment and tools as well as for the physical workspace at the clinic. When agreeing to rent or lease the clinic's property, have a detailed list of what you have the right to access in the appendix of a contract. <i>This MUST be a flat rate fee paid regardless of the amount of patients seen.</i> It is recommended that the payer invoice the physiotherapist monthly and that the physiotherapist issues a check to the payer for the expense, as this illustrates independence. The fee should be a reasonable amount - not too low to be considered non-existent and should include all applicable taxes.</p>
Subcontracting Work and Hiring Assistants	<ul style="list-style-type: none"> Worker must perform the assigned tasks personally 	<ul style="list-style-type: none"> May hire another person to perform the work without the payer interfering. 	<p>A self-employed physiotherapist may subcontract another person, such as a PTA, to perform the tasks.</p>
Financial Risk	<ul style="list-style-type: none"> -Payer responsible for operating costs -Working relationship is continuous -Worker is not liable if contract is not fulfilled -Payer determines method and amount of pay 	<ul style="list-style-type: none"> -Pays hired helpers -Incurs expenses related to own workspace -Hired for a specific job and not ongoing work -Financially liable if contract if not fulfilled -Receives no benefits or protection from payer -Responsible for advertising their services and actively markets him/her-self 	<p>Self-employed physiotherapists must demonstrate financial risk. One area of demonstrated risk is payment of fixed monthly expenses whether on or not work is done, as there could be an incurred loss. Not seeing the same amount of patients each month is not considered financial loss/risk.</p>
Responsibility for investment and management	<ul style="list-style-type: none"> -Normally, worker has no capital or limited capital investment -Worker has no business presence 	<ul style="list-style-type: none"> -Worker has capital investment -Worker manages their staff -Worker has established business presence 	<p>A self-employed physiotherapist has made a capital investment by using money to buy fixed assets such as office space and equipment. To establish a business presence, a physiotherapist would have to market themselves and separate their worth from the clinic's business. This is the rationale behind supplying your own business cards, phone number, and advertisements.</p>
Opportunity for profit	<ul style="list-style-type: none"> -Worker does not have profit or loss -Worker is entitled to benefit plans 	<ul style="list-style-type: none"> -Worker can hire substitutes -Worker is compensated by a flat fee and incurs expenses 	<p>Self-employed physiotherapists cannot receive benefits such as registered pension plans, health & dental plans, or disability insurance from the payer. The chance to experience profit or loss is from the perspective of the worker and not the payer. A self-employed physiotherapist can have a profit or loss due to their autonomy in accepting work, negotiating prices for the job, working in multiple clinics, and carrying expenses for having their business (ex. Equipment, tools, workspace).</p>