

Tread Lightly When Classifying Individuals as “Independent Contractors”

At e2r Solutions®, we routinely advise employers to exercise caution when entering into independent contractor relationships. When considering the recent decision against Shaw Communications (“Shaw”), it’s easy to see why!

As a result of complaints filed by two former independent contractors, a federal adjudicator concluded that Shaw has been incorrectly classifying a number of individuals who perform work for them as independent contractors rather than employees. Despite the fact that Shaw dictated the independent contractors’ full-time hourly wages and schedules, they were not entitled to overtime or vacation in accordance with the *Canada Labour Code*. Income tax, CPP and EI remittances were not made either on their behalves. The complainants had previously voiced their concerns to Shaw management but were advised that they were free to leave their positions with Shaw if they were dissatisfied with the arrangement. In response to the complaints, Shaw was ordered to pay back wages, the specifics of which have not yet been disclosed.

What can employers learn from this high profile decision? The lesson here is that entering into an independent contractor relationship may expose an organization to liability where the contractual terms and actual duties closely resemble an employment relationship. It is always advisable to seek legal advice in advance of entering this type of contractual arrangement and we encourage you to contact e2r Solutions® should you require assistance with engaging independent contractors in your organization.