

Managing your support funding

As a family who has a son, daughter, sister or brother with a disability, you may receive funding to assist you with developing and paying for supports.

- For children under the age of 18 this funding might include Special Services at Home, (SSAH) Assistance for Children with Severe Disabilities (ACSD), Enhanced Respite, Autism Respite (ASD respite).
- For adults with a developmental disability it might include Passport funds and/or other types of individualized funding.

There are different ways to manage these funds and you will want to think about what is best for your situation. You can contract with an agency to manage your funds with your guidance and input or you may choose to manage the funds yourself.

OPTION 1: You contract with an agency to manage your funds with your guidance/input.

- Agencies provide different options. Some provide **a menu of supports and services that you can purchase**. This might include paying for specific kinds of supports, contracting with them to use their staff, getting assistance to recruit Direct Support Provider and getting help with the paperwork and invoicing process. Community Living Windsor, Community Living Essex County and Family Service Windsor Essex all provide assistance for adults with Passport funds or individualized funds.
- For Special Services at Home, in Windsor and Essex County, **Family Respite Services will hire contract employees** to provide support to families through Special Services at Home. The employees must be screened through FRS and provide appropriate documentation (e.g. police screen, references etc.) Families choose who they wish to provide the support, providing the person meets the requirements of the screening and there are not any employment issues between the employee and FRS. FRS pays the employee, including the appropriate deductions and provides the employee with a T4 slip. FRS provides a summary of expenses to you. FRS is reimbursed directly from the Ministry for the funds paid from the contract that was approved for the individual.

OPTION 2: You manage the funding

If you manage the funding, you will need to decide if you will be contracting with someone who will be self-employed, or if you will be the employer.

Here are some considerations and information about this.

If you have are managing the funding, there are a number of steps that you can take to protect yourself with regards to engaging Direct Support Provider, including:

1. Correctly determine the status of their Direct Support Provider based on the role they fill
2. Identifying legal obligations based on the status of the DSP
3. Doing a thorough screening in advance of contracting with a new support provider.
4. Limiting liability through written contracts
5. Managing the relationship day-to-day to avoid surprises

The following is a brief summary of the general considerations you should keep in mind in order to achieve the five steps above.¹

Status Determination – Employee or Independent Contractor?²

Generally, decision makers are concerned with factors that are very commercially oriented in that they are focused on the role the worker plays in the employer's business. In the family context many of these factors do not apply. Some factors that are relevant however include:

- Who controls how, when, and where the work is performed?
- Do you direct and supervise the Direct Support Provider or does the DSP dictate the work to be done?
- Can the DSP provide service to others while working for you, or during the hours they are not working for you?
- Can the DSP have a subcontractor perform the work for you if he/she is unavailable?
- How dependent on you is the worker for his/her livelihood?
- Does the contractor work out of your home or does he/she have his/her own space where he/she provides the services?
- How flexible is the schedule?
- How is the person paid (i.e. scheduled pay day or by invoice)?
- Do you provide vacation, holidays, overtime pay or other benefits typically associated with employment?

In short, the more flexibility and control your Direct Support Provider has, the more likely they will be deemed an independent contractor.

By contrast, the more integrated into and dependent on your family they are, the more likely he or she will be deemed an employee.

I) Purchasing the Services of an Independent Contractor

a) Status Implications

If based on the factors discussed above you determine that the Direct Support Provider in question is an independent contractor then the implications include the following:

- The Direct Support Provider is responsible for filing his/her own Income Tax
- Your family is not liable for CPP or EI contributions or remittances

¹ Disclaimer: The information provided in fact sheet is not legal advice and is being provided for general information purposes only. While we attempt to convey current and accurate information, we make no representations or warranties of any kind, express or implied, about the completeness, currency, accuracy, reliability, suitability or availability of the information. Any reliance you place on such information is therefore strictly at your own risk. We recommend that you seek independent legal advice regarding your particular situation and circumstances.

² Note: A DSP can be both an employee and an independent contractor. Employees are frequently deemed to be an employee for the purposes of the Employment Standards Act, an independent contractor for the purposes of the CRA, and a "dependent contractor" for the purposes of WSIB.

- The DSP is not eligible for paid public holidays or vacations
- There are no limits on his or her hours of work and he or she is not entitled to overtime
- The DSP is not entitled to employment law reasonable notice of termination
- He or she is responsible for procuring his or her own WSIB and/or insurance coverage
- He or she should charge HST depending on his or her revenues.

While it is very tempting to treat a Direct Support Provider as an independent contractor based on the above, we recommend caution in doing so. Mistakenly treating them as an independent contractor when the work relationship matches that of an employee can be very costly. The consequences may include liability; to the CRA for unpaid remittances; to the employee for unpaid wages, vacation, public holidays and overtime; for injuries suffered by the employee; for unpaid WSIB premiums; and/or unlimited liability at common law for reasonable notice of termination among other things.

b) Recommendations for an Independent Contractor Relationships
Before you contract for purchasing services with them:

We recommend doing a thorough screening of every candidate for a position before entering into a working relationship with them. Screening should include:

- Screening the person's references and recommendations
- Requiring a vulnerable sector screening/criminal records check
- Confirming training and certification requirements are up to date
- Depending on the type of work involved this may include a medical confirmation of immunizations.

Selecting a Candidate

Once you've selected a candidate, we recommend that the parties' intentions be clearly communicated in a contract³ that includes some or all of the following clauses:

- Include a clause to identify that you are not responsible to cover costs if the Direct Support Provider is "deemed" to be an employee
- Specify the scope of the work (whether it's for a fixed period of time, or to achieve a certain purpose)
- Include invoicing procedure instead of wage-based/payroll arrangements e.g. timesheet
- Specify right to work for others
- Specify if the contractor can employ subcontractors if appropriate or if it is your choice to go without service if they are not available.
- Confirm qualifications and compliance with training, licensing and regulatory requirements
- Specify responsibilities and services
- Include terms on which the agreement can be terminated
- Include requirement that the worker procure WSIB and/or insurance coverage (if you don't do this consider taking out WSIB for the worker and/or confirming that your own insurance will cover the worker).

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After the Person begins providing services for you:

Once the relationship begins be sure that in practice the relationship continues to be one that meets the independent contractor criteria. If the relationship changes consider entering into a new contract that reflects the new status.

It is also a good idea to keep detailed records of your arrangements, including a copy of the contract and all invoices.

II) Hiring an Employee

a) Status Implications

If based on the factors discussed above you determine that the worker in question is an employee, or the worker's status shifts from an independent contractor to an employee then the implications include the following:

- You must deduct and remit Income Tax, CPP contributions and EI contributions;
- You must file a T1, T4, and T4A with the CRA;
- You must keep a detailed accounting of hours worked, wages paid, deductions and contributions remitted;
- You must provide paid public holidays and vacation, and must comply with minimum wage, hours of work and overtime requirements;
- You must provide notice of termination (or termination pay) in accordance with the ESA, and in accordance with the common law if you haven't properly addressed this in an employment contract;
- Keep records of hours of work, wages, overtime, vacation, public holidays, and lieu time;
- Provide a Record of Employment upon termination; and
- Depending on the type of work you may be required to have WSIB coverage.

While this may appear to be onerous once the payroll arrangements and contractual details are worked out at the beginning of the relationship things tend to run fairly smoothly from that point forward.

b) Recommendations for Employment Relationships

Pre-hire

Similar to the process with an independent contractor, we recommend doing a thorough screening of every candidate for a position before entering into a working relationship with them. Screening should include:

- Screening the Direct Support Provider/worker's references and letters of recommendation
- Requiring a vulnerable sector screening/criminal records check;
- Confirming training and certification requirements are up to date; and
- Depending on the type of work involved require medical confirmation of immunizations.

Hiring

Once you have selected the candidate for the job we recommend that you provide them with a written contract setting out the terms of their employment at least 5 to 7 days in advance of their first day of work.⁴

We would recommend that the following be included in the written contract:

- Make the employment conditional on the employer providing vulnerable sector screening/criminal records check clearance;
- Include a probationary period;
- Include a termination clause excluding common law reasonable notice and restricting entitlements to ESA minimums only;
- Specify the worker's vacation and holiday entitlements;
- Specify how the DSP/worker will be paid (i.e. hourly wages vs. salary);
- Specify how overtime will start to accumulate and how it will be compensated (Lieu Time vs. Overtime); and
- Specify the DSP/worker's hours of work.

After you have hired the person:

In order to limit your liability and exposure during employment we recommend that you confirm your legal obligations with the WSIB and your coverage with any private insurance provider.

When it comes to managing the employment relationship, it is prudent to check-in with the Direct Support Provider/worker regularly and provide supervision and direction to avoid misunderstandings. You may also wish to provide evaluations on an annual or semi-annual basis.

Where performance issues arise provide feedback and counselling. Keep written records of your discussions and the performance issues or misconduct at hand. Where necessary provide clear warnings in writing.

You are also required to keep written records to track hours of work, overtime, vacation, public holidays, and lieu time. Your records are your best defense to complaints from a dissatisfied worker.

From a CRA perspective, be clear on your obligations in respect of deducting and remitting income tax, CPP and EI, and your responsibilities when it comes to completing T1s, T4s, T4As and ROEs.

⁴ In order for the terms to be valid and binding the employee must have known about them and understood them (or at least had the opportunity to understand them) before they accepted them. Providing the contract in advance of the start date gives the worker the chance to read, consider and get advice on the contract if they don't understand something.