

ADVISORY LETTER

BY E-MAIL

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February 13, 2004

TO: ALL FIR MEMBER COMPANIES

Gentlemen and Mesdames:

RE: Pension Plan Audits and Concern with Contractors

The IWA-Forest Industry Pension and Long Term Disability Plans regularly conduct audits on Participating Employers as part of their normal administration duties. Information obtained is used exclusively to determine if the correct amount of contributions has been remitted as specified in the Plan Texts and Master Agreement.

Occasionally, member companies express reservations about being required to provide information to the Plan Auditor about the contractors they employ.

The attached document, prepared by the Plan Office, explains why this information is required.

Please note that the information collected in audits is confidential and is not disclosed to anyone unless the Plan is lawfully required to do so.

Yours very truly,



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Vice President, Education and
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IWA-Forest Industry Pension and Long Term Disability Plan Audits

Why are we concerned with “contractors” when we audit?

Plan requirement to audit:

The Plan Text requires Employing Companies to supply contribution reports that record essentially all hours worked for all eligible employees. In the cases where there are “contractors” involved, sometimes it is not clear whether these individuals are really an employee/dependent contractor or independent contractor. When it is unclear, auditors must then determine their status.

If a determination is made that the relationship is one of a “**dependent**” nature, the hours are included in the audit. If the status is “**independent**” the hours are omitted from the audit.

Definition:

The *BC Labour Relations Act* defines “dependent contractor” to mean: a person, whether or not employed by a contract of employment or furnishing his or her own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor.

Testing:

The relationship is often obscure and requires the auditor to employ any number of the tests listed below to determine the relationship between the worker and the payer.

1. Interviewing:

The auditors will conduct an interview with the employer using the Canada Customs and Revenue Agency (“CCRA”) four-fold test as a guideline.

(CCRA circular RC4110, *Employee or Self-Employment Guide*)

These tests are:

1. Degree or absence of control exercised by the “employer”
 - if the employer exercises control over the worker, then an employee – employer relationship probably exists.
2. Ownership of tools
 - if the employer supplies and maintains the tools and equipment, if there is no risk of loss for the worker, then an employee – employer relationship probably exists.

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3. Chance of profit and risk of loss
 - if the worker's income does not depend on the results achieved at the end of the contract, then an employee – employer relationship probably exists.
4. Integration of the “employee's” work into the “employer's” business
 - if the worker integrates his activities to the commercial activities of the payer, then an employee – employer relationship probably exists.

2. Contracts:

If there is an existing contract, the intent may be clearly laid out as to the relationship.

3. Invoices:

The auditors will review the invoice to see the number of hours worked by a contractor to establish the probability of economic dependence or independence.

4. Cancelled Cheques:

A review of the cancelled cheques will reveal whether the payment was made to a company or an individual.

5. WCB Report:

The WCB report is used to establish whether or not the employing company registered the “contractor” for WCB purposes as a contractor or employee.

6. Union Dues Record:

When reviewing union dues records, see if the employer has been paying dues for these individuals.

Confidentiality:

The Plan treats information it collects from audits as confidential and uses it only for purposes of Plan administration. Information is not disclosed to anyone unless we are lawfully required to do so. The Personal Information Protection Act, which became effective on January 1, 2004, reinforces our obligation.