



JOHNSTONE'S JOURNAL is published monthly, and designed to provide topical information of interest not only to plan administrators, but to all employees who enjoy coverage under the benefit plan. Feel free to make copies, and use as a payroll staffer.

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## Employee versus Independent Contractor Who Qualifies for Your Group Benefit Plan?

### Employee versus Contractor

Workers can be either employees or independent contractors. Employees are, of course, on the company's payroll. They also have the advantage of qualifying for the company's group benefit plan if they work on a permanent, full-time, basis. Contractors, on the other hand, invoice the company for their services and then take care of all their own expenses and taxes.

There may be cases when the line between independent contractor and employee status becomes blurred, and the contract worker appears more like an employee. In these situations, **be careful before promising coverage on your employee benefit program.**

### Group Benefits: the Insurer's Test

In general, group benefit coverage is provided to employees who are on payroll, work the required minimum number of hours a week, and do not have an end date to their employment contracts. Employees who are hired for a specific period (minimum one year) may be eligible for group coverage, but must be approved by the insurer. Independent contractors—those workers who invoice the employer for services rendered—are not viewed as employees, and unless specifically addressed in the contract or by exception, are not entitled to participate in the employer's group benefit plan.

If the insurer has not agreed to provide coverage for a contractor, there may be a serious problem **in the event of a claim.** Insurers may check payroll records to verify eligibility, particularly when there is a significant loss such as a life, disability or an emergency travel claim. If an individual becomes disabled and is actually deemed a contractor (not listed in the company's payroll) **the insurer may deny the claim.**

One of the insurer's main concerns is that disability coverage is based on income from the employer. It is easy to determine the net income of employees on payroll. Contractors, on the other hand, typically

receive income from more than one source and then use it to pay expenses that regular employees don't have, such as the cost of equipment or office space. These variables make it difficult for insurers to properly calculate the appropriate benefit level.

### Choices to Make

Companies occasionally ask the insurer to make an exception and add a contractor to their benefit plan. Some insurers may consider allowing a contractor to enroll in a portion of your group benefit plan when a solid argument can be made that the contractor is really an employee by another name. It all depends on the extent to which the contractor actually looks like an employee.

If you believe a worker meets the test of being an employee (income source, location of work, ownership of tools, direction and supervision by the employer), we can request an exception to allow the contractor to enroll in the group plan. This must be done **before you offer coverage.** If the insurer declines, you have two choices:

- Change the contractors' employment status and add them to payroll. Your company then becomes responsible for all the statutory benefits (CPP, EI, WCB).
- Arrange to have contract employees purchase their own personal benefit coverage.

Note that adding a contractor to your benefit plan may have implications with regard to their contractor status, and we recommend both parties perform due diligence to ensure everyone understands those implications.

### Contractors with a Financial Interest

In some cases, the **contractor may have a financial interest in the company that provides the benefits** (or vice versa). If so, we can explore adding the contractor's company to the master contract as an affiliated or associated company. This will insure all sources of the contractor's income. It also means that if the contractor has any employees, they too will be eligible for coverage.