EI AND FAMILY MEMBERS: ARE YOU PAYING TOO MUCH?

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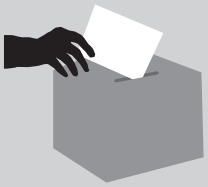
Each year, employers and employees are required to pay sizeable Employment Insurance (EI) premiums. Many are unaware that under certain conditions contributions should not be paid, and the employee on whose behalf they are submitted cannot claim EI benefits. Often, this issue does not come to light until an employee tries to claim EI from Employment and Social Development Canada (ESDC) due to job termination or family leave.

CONDITIONS OF ELIGIBILITY

Employment Insurance claims are most often refused when employees are considered to have a **non-arm's length relationship** with their employer. In such cases, the number of years paid into EI is not relevant. In general, the Canada Revenue Agency (CRA) does not consider these jobs insurable due to the non-arm's length relationship that exists, whether through blood (e.g. son), marriage (including common-law) or adoption. Where CRA believes the employer and employee have a job contract similar to one that would apply to an unrelated employee, they are considered to work at arm's length. In such a case, EI premiums must be paid.

There are two scenarios in which premiums should not be paid, since the job is not considered "insurable".



1. Where **the employee** controls over 40% of the corporation's voting shares.

2. Where the employee is **treated differently** because he or she is a relative (non-arm's length relationship).

ESDC refers most often to the second scenario when refusing an individual's claim for EI benefits. However, this criterion is applied on a case-by-case basis rather than systematically. The conditions of its application are not always easy to verify. Please note that while ESDC pays or refuses to pay EI benefits, only CRA has the authority to rule on a person's eligibility.

PROCEDURE

Important: We suggest you contact your regional CFIB Business Resources Department before requesting a ruling from CRA. You may find the following information helpful in understanding the reasoning CRA uses when making its decisions.

Ask yourself: Could the job in question, *where all the conditions of employment remain the same*, be done by anyone other than the relative? If the answer is,"yes", the employment is likely insurable; a job created with a relative in mind is likely not.

THE FOLLOWING CIRCUMSTANCES ARE USEFUL INDICATORS OF ***UNINSURABLE EMPLOYMENT***:

- The employee's work schedule is flexible (the employee is free to organize his or her own work time).
- The employee receives the same salary, regardless of the number of hours worked.
- The salary is paid only once a year.
- The salary is not determined before the employee fills the position.
- The employee is part of a preferential benefits plan.
- The position is created exclusively for the benefit of a relative.
- The employer exercises no control over the employee.
- The employee works from his or her home.
- The work is organized around child care or other personal needs.
- The employee receives a salary plus bonuses.
- The employee enjoys additional vacation time.
- The employee has signing authority on business bank accounts.
- The employee for all practical purposes cannot be fired.

This list is not exhaustive. A positive answer to any one of the above does not mean an employee cannot get EI benefits. It does, however, give a good indication of the criteria used by CRA when making its determination.

There are steps you can take if you believe that you and a close relative have been needlessly contributing to Employment Insurance. Note that within a certain time frame, and once the employee has been ruled uninsurable, you can request a refund. **Contributions for up to three years plus the current year can be obtained**. You will not be penalized by CRA for making an application.

(The above procedural information is largely based on the document, "Taxing Issues: Unemployment Insurance—Are your relatives paying too much?" by Tracey Jennings, C.A.)

Get in touch.
We're here to help.

Any questions? Call our business counsellors today.

1-888-234-2232 or **cfib@cfib.ca**

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