CRA Employment Status Rulings: Important information for all postdocs working in Canada

As a member of the Executive Board of the Canadian Association of Postdoctoral Scholars / Association Canadienne des Stagiaires Postdoctoraux (CAPS/ACSP), I regularly respond to emails from postdocs working all over Canada, who contact our organization for assistance and advice. Far too often those emails are from postdocs who are pregnant (or their friends or colleagues), who contact us seeking information about sources of funds for support during maternity leave. I am sure that many of you know postdocs working in Canada who have faced these or similar challenges related to the lack of access to Employment Insurance (EI) benefits.

At its core, this problem relates to employment status, as postdocs working at Canadian research institutions are often classified as ‘trainees’ (or even students), and are thus denied access to the protections and benefits afforded to ‘employees’ by EI and the Canada Pension Plan (CPP). This issue was highlighted in the 2013 Canadian Postdoctoral Survey conducted by CAPS/ACSP and Mitacs (Mitchell et al., 2013), wherein less than a quarter of respondents indicated that they had access to such benefits (Figure 1). Thus it is clear that the majority of postdocs working in Canada lack access to CPP and the protections afforded to the majority of Canadian workers through EI, which include: job-loss (i.e., ‘regular’), sickness, maternity, parental, and compassionate care benefits, as well as special benefits for parents of critically ill children.

![Figure 1](http://www.cra-arc.gc.ca/E/pbg/tf/cpt1/README.html)

While unionization is well known to provide members (i.e., postdocs who are deemed ‘employees’) with access to EI and CPP, my involvement in CAPS/ACSP has demonstrated to me that many postdocs are unaware that there is another option for pursuing those benefits, either as an individual or a group. With the support of the CAPS/ACSP Executive Board, I wrote this post to rectify that situation by raising awareness among postdocs about employment status rulings available through the Canada Revenue Agency (CRA).

The employment status of workers in Canada is a legislated matter, so whether you qualify as an ‘employee’ is not simply determined by how you are classified by the company you work for or the details of the labour contract you signed. Furthermore, as a worker in Canada you have the right to question your employment status if you believe that you should have access to EI and CPP benefits through your work. At the federal level, such disputes are handled by the CRA, which has final word (unless appealed – see below) regarding whether or not a particular worker should be considered an ‘employee’ and granted EI/CPP eligibility.

If a worker wishes to contest their employment status the procedure is quite straightforward, as one must simply ask the CRA for a ruling by completing Form CPT1 (“Request for a ruling as to the status of a worker under the Canada Pension Plan and/or the Employment Insurance Act”; available online at [http://www.cra-arc.gc.ca/E/pbg/tf/cpt1/README.html](http://www.cra-arc.gc.ca/E/pbg/tf/cpt1/README.html)). This form is very easy to complete, as it only requires the name and contact information for the ‘payer’ (i.e., the potential employer) and the ‘worker’ (i.e., the potential employee). In addition, one can request a ruling on behalf of multiple workers under the same payer, by simply attaching additional sheets to provide the contact details for all the workers seeking a ruling. After the form is submitted, an authorized officer of the CRA contacts both parties to discuss the working arrangement and request any additional information required to reach a decision. Based on a list of criteria, the officer then makes a ruling as to whether the worker is “an employee working in pensionable and/or insurable employment” and communicates that ruling to both parties. There is of course an appeals process if you disagree with that ruling.
Detailed information regarding all aspects of this process, including the list of relevant criteria can be found in *Guide RC4110* (“Employee or Self-Employed?”; available online at [http://www.cra-arc.gc.ca/E/pub/tg/rc4110/](http://www.cra-arc.gc.ca/E/pub/tg/rc4110/)).

Importantly, this option is also available to those who have already lost the position they’re inquiring about, as any person can request a CRA ruling regarding employment that ended in the previous year (regardless of why it ended), provided that they submit this request by June 30th of the current year. To be explicit, that means that a person who was employed as a postdoc in 2015 but has since lost that position can still request an employment status ruling from the CRA for their postdoctoral work in 2015 as long as they submit that request by June 30th 2016 (i.e., 2 weeks from now).

If the goal of requesting a CRA ruling is to gain access to EI benefits, then one must consider the timing of this request carefully, as there are limits on the qualifying periods for all EI benefits and eligibility is typically determined by the number of hours worked within the qualifying period prior to any claim. As a general rule, one must have worked 600 hours in the year (52 weeks) immediately preceding the claim date to be eligible for most EI benefits. So, if a person worked as a postdoc for 600 hours or more after June 30th 2015 they should still be eligible for EI benefits if they file a claim by June 30th 2016. For postdocs working full-time, this means that anyone who lost their job in late October 2015 would likely still qualify for most EI benefits today, even if they had not been employed since, provided they first managed to attain a favourable ruling from the CRA. Furthermore, it should be noted that gaining a favourable ruling from the CRA does not constitute making an EI claim, as applying for EI benefits is an entirely separate process.

If the CRA rules that an ‘employer-employee’ relationship exists (or existed), then the person’s income during the period of employment in question becomes subject to EI premiums (1.88% up to a maximum of $955 for the employee and 1.4X that amount for the employer) and CPP contributions (4.95% on income above $3,500/year up to a maximum of $2544 for the employee, with a matching contribution from the employer) retroactively. So gaining EI and CPP will cost a postdoc up to $3,499/year and their institution up to $3,881/year, assuming an annual postdoc salary of >$54,000 at current rates. In exchange for paying those fees, this employee gains pension contributions for the period of employment (which can be collected on later in life even if you have left Canada) and access to EI benefits as determined by the period of insurable employment and the eligibility window for specific benefit programs (for details see [https://www.canada.ca/en/services/benefits/ei/index.html](https://www.canada.ca/en/services/benefits/ei/index.html)).

**Now for the caveats...**

1. The potential employer must be the ‘payer’ on the CRA ruling request form. This may weaken the case for any postdocs funded by external awards. That being said, I have personally spoken to a postdoc who was funded externally, yet managed to attain paid maternity leave after informing her institution that she would seek a CRA ruling if they refused her request for paid leave. This only serves to highlight the importance of negotiating with your institution, as they may choose to provide support rather than risk an unfavourable decision by the CRA.

2. There is no guarantee that the CRA will rule in your favour, as there are a number of criteria used to determine whether an employee-employer relationship exists. One should examine the criteria listed in Guide RC4110 (see link above), and keep in mind that the CRA tends to follow the approach used by the Tax Court of Canada in previous decisions regarding the employee status of postdocs (see caveat #4 below). Perceived control is a key element in the courts’ approach to these cases, so for the purposes of determining whether an employer-employee relationship exists, the CRA looks for evidence that the payer/supervisor has the ‘right’ (whether they exercise it or not) to:

   a. Assign specific tasks
   b. Determine what work will be done – even if the employee is given options
   c. Determine how that work will be done – particularly if they have the last word on this
   d. Set the work schedule, require approval for leave, and monitor the leave/work schedule
e. Terminate the worker without notice for cause

3) Your supervisor or institution may not be pleased with your decision to request a CRA ruling, so be prepared for some people to respond negatively to your actions.
   a. Keep in mind that your supervisor will likely be expected to cover the employer portion of EI and CPP contributions (see estimate above) from their own funds, as universities generally do not have faculty or administrative funds earmarked to cover those expenses.
   b. To my knowledge a CRA ruling does not carry any protection against subsequent job-loss (unlike unionization), so there is a chance that you may gain employee status only to find that your employer no longer wishes to renew your contract.

4) I am aware of only two cases where a postdoc requested a ruling from the CRA (known as the Canada Customs and Revenue Agency at the time). In both cases, those rulings were initially in favour of employee status for the postdoc, but the decision was later overturned by the Minister of National Revenue on appeal by the payer (the University of Alberta in both cases). These postdocs both chose to appeal to the Tax Court of Canada, but the Minister’s decision was eventually upheld in these cases (Bekhor v. Canada 2005, TCC443 and Naghash v. Canada 2005, TCC694). Contrary to those rulings, subsequent cases regarding postdoctoral employment status brought before the Tax Court have been favourable, as evidenced by two more recent cases (Chabaud v. The Queen 2011, CCI438 and Caropreso v. The Queen 2012, TCC212) that ended with rulings that deemed the pay of the postdoc in question to be ‘employment income’. The details of all of these cases are available online at the Canadian Legal Information Institute website (http://www.canlii.org/en/). Although the previous decisions appear contradictory, the deciding factor in all of these cases was whether the postdoc or the payer had ‘control’ over the work. As a result of these cases, the CRA has revised its criteria for determining employee-employer relationships for postdocs to include control as a major criterion for establishing employment status for this group (see caveat #2 above).

In closing I would like to make it perfectly clear that neither I, nor CAPS/ACSP, recommend, endorse, or advise this course of action to any individual postdoc. We are not legal professionals and we do not know the details of your specific situation, so that would be inappropriate and irresponsible. Instead my goal here was to simply share information and raise awareness regarding the available options for postdocs who wish to pursue access to EI or CPP.

I sincerely hope that those in need in the postdoctoral community in Canada find this information helpful. However, as professional researchers and highly intelligent adults, I expect every person reading this post to investigate these matters for themselves (by consulting the CRA website via the links provided or calling the CRA directly at 1-800-959-5525) before deciding whether acting on this information in in their best interest. If you would like more information, or you wish to share your experiences (on any topic including CRA Rulings) with CAPS/ACSP, please contact the Executive Board (caps-acsp-officials@googlegroups.com) or email me directly (finance@caps-acsp.ca until June 30, 2016; chair@caps-acsp.ca after July 1, 2016).

Sincerely,

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Chair (Elect), CAPS/ACSP

Reference: