

Employee or contractor?

How to know the difference

Overview

Employment Standards deals with questions, requests for information and complaints related to Alberta's *Employment Standards Code*. Sometimes interpreting these pieces of legislation can raise questions about the distinction between contractors and employees. For example, who is entitled to certain payments? Or to take time off work?

Most employees and employers in Alberta are covered by the Code. However, the Code does not apply to the self-employed/contractor.



The Code does apply to contractors if they are also employers; the Code will protect the employees that they hire.

Under the Code, an employer is “a person who employs an employee”. The definition includes former employers. An employee is defined as “an individual employed to do work who receives or is entitled to wages”. The definition includes former employees.

Here are some general guidelines to help you determine whether or not an individual is an employee or a contractor.



While general guidelines apply, it's important to know that different government organizations use their own specific considerations to decide if a worker is an employee or a contractor (for example: the Canada Revenue Agency (CRA)).

Table 1: Working conditions that determine if someone is an employee or a contractor

	Employee	Contractor
	Direction and control	
Method of payment	<ul style="list-style-type: none"> • Receives an hourly, weekly or monthly wage or salary, or is paid on commission • Receives a pay-related document such as a pay cheque and statement of earnings 	<ul style="list-style-type: none"> • Submits invoices • Receives pay as a lump sum or in installments, often on contracts received as the result of a successful project bid
Hours of work	<ul style="list-style-type: none"> • Usually works specified hours set by the employer 	<ul style="list-style-type: none"> • Generally is free to choose time of work
Benefit plans	<ul style="list-style-type: none"> • Receives benefits such as vacation pay, Employment Insurance and Canada Pension Plan contributions. Benefits are paid for in full or part by the employer 	<ul style="list-style-type: none"> • May pay insurance premiums for privately held-plans • In most cases, does not participate in the Employment Insurance program
Training	<ul style="list-style-type: none"> • Receives in-house, on-the-job or outside training that is provided, paid or reimbursed by the employer 	<ul style="list-style-type: none"> • Has the required training before starting the job • Pays his or her own training costs
Full-time, personal and exclusive service	<ul style="list-style-type: none"> • Usually devotes all working time to one employer. (Someone with several part-time jobs with different employers is still considered an employee.) • Personally performs the work or service and cannot hire someone else to do it 	<ul style="list-style-type: none"> • Typically has many potential income streams and serves a number of payers during a given period (on a large project, for a while, most of the contractor's time may be spent on that project) • May employ or subcontract others to do the work
Schedules and routines	<ul style="list-style-type: none"> • Works under the direction and control of an employer 	<ul style="list-style-type: none"> • May have to meet deadlines, but can set the schedule, sequence or manner in which the work is done

Right to discharge or terminate employment	<ul style="list-style-type: none"> • Can be discharged from work, provided <i>Alberta's Employment Standards Code</i> and other requirements are met • Can terminate his or her employment in accordance with <i>Alberta's Employment Standard's Code</i> requirements 	<ul style="list-style-type: none"> • Normally, as long as he/she has complied with the requirements of the contract, cannot be discharged by the payer without compensation • Normally, as long as the payer has complied with the requirements of the contract, cannot terminate the contract without liability • If the contract allows for termination, the payer of the contractor can do so under the specified conditions
Supervision and compliance with instructions	<ul style="list-style-type: none"> • Works under the supervision of the employer • Generally must follow the employer's instruction on how, when and where the work is performed • Generally must follow the employer's instructions regarding the quality or volume of work 	<ul style="list-style-type: none"> • Generally works without supervision to meet the requirements of the contract • Does not receive or follow ongoing instructions on when, where and how to work • Decides what methods will be used to achieve the final outcome
Specific results	<ul style="list-style-type: none"> • May perform a variety of tasks and duties (the relationship with the employer continues after these tasks or duties have been completed) 	<ul style="list-style-type: none"> • Supplies a project or service as required by the contract (once these requirements have been met, the contractual relationship ends)
<ul style="list-style-type: none"> • Ownership of facilities, supplies, tools and equipment 		
Facilities and premises	<ul style="list-style-type: none"> • Usually uses a workspace, furniture, phone, computer and related equipment provided, maintained and paid for by the employer 	<ul style="list-style-type: none"> • Usually supplies (leases, rents or owns) the space, furniture, phones, computers and other equipment needed to work • When possible or necessary, may work at the payer's premises
Tools and Equipment	<ul style="list-style-type: none"> • Usually uses tools, equipment and materials provided and paid for by the employer (Some tradespeople, including mechanics and carpenters, provide their own hand tools even when they are employees) 	<ul style="list-style-type: none"> • Usually buys, rents or leases the tools, equipment, materials and supplies – including letterhead and business cards – required for the job • Usually arranges and pays for tools and equipment maintenance and upgrades

Chance of profit or risk of loss		
Profit	<ul style="list-style-type: none"> • Does not necessarily earn more if work is completed more quickly than expected or if other savings occur • May earn more through bonuses or incentive pay plans • May earn more as length of service or experience increases 	<ul style="list-style-type: none"> • Stands to make more money if project work is completed more quickly than expected or if other savings occur
Risk of loss	<ul style="list-style-type: none"> • Is paid for labour or services provided • Receives pay at an established rate that is independent of the employer's sales, profits or losses • Is not responsible for covering bad debts: debts are the employer's responsibility 	<ul style="list-style-type: none"> • Stands to make less money if project work takes longer to complete, if a bid is inaccurate or if costs increase because of damage or for other reasons • Risk having periods with less work (possibly after an unsuccessful contract bid) and therefore less income • May have to deal with bad debts
Integration		
Independence and self-employment	<ul style="list-style-type: none"> • Is not self-employed • Is part of the employer's business and depends on one income source (part-time employees with several employers are still employees) • The longer and more permanent the working relationship, the more likely that someone is considered to be an employee 	<ul style="list-style-type: none"> • Acts on his or her own behalf • Is in business for his or her own benefit and is not part of the payer's business • Relies on several income sources or payers over time • Does business with the general public. • May hold a business license • Has a GST number or WCB account

1 Table adapted from: Employee or Contractor? Know the Difference. Catalogue Item # 708399. Alberta Employment and Immigration. 2008. Government of Alberta.

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For more information, please contact the Employment Standards Information Centre: 780-427-3731 (Edmonton and surrounding areas) 1-877-427-3731 (Toll-free)

From a cell phone, call #310 on Telus and Bell or *310 on Rogers.

Ask a question online at: <https://www.alberta.ca/contact-employment-standards.aspx>

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780-427-9999 (Edmonton and surrounding areas) 1-800-232-7215 (Toll-free)

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