

EMPLOYER'S GUIDE:
HIRING, EMPLOYMENT and
LEGAL OBLIGATIONS



This guide was developed by the Habitat Conservation and Stewardship Program to assist Community Groups in understanding the complexities of hiring or contracting people through the contribution monies they receive through our program partnership.

Prepared by:
A.H. Senae Inc.
Certified General Accountant
33221 Whidden Avenue
Mission, BC V2V 2T3
Tel: (604) 826 8060

**EMPLOYER'S GUIDE
HIRING AND EMPLOYMENT - LEGAL OBLIGATIONS**

INTRODUCTION

The following is an employer's guide to understanding and following the legal requirements for hiring or otherwise obtaining the services of an individual in British Columbia. Many practices and procedures in the work place are implemented in order to comply with statutes that address employment issues.

The statutes that determine basic rights for employees and obligations for employers in British Columbia are the following:

Employment Standards Act and Regulations
Human Rights Code and Regulations
Workers Compensation Act
Income Tax Act (Federal) Section 153

Employment Standards Act and Regulations sets minimum standards for wages and conditions of employment in British Columbia. Issues commonly dealt with are entitlement to overtime pay and vacation pay, minimum wage, statutory holidays, termination of employment and length of service compensation (severance pay).

Human Rights Code and Regulations prohibits discrimination in employment advertising and hiring on the basis of race, color, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, pregnancy, sexual orientation, age or criminal conviction unrelated to the employment. The BC Human Rights Commission investigates and mediates complaints of discrimination.

Workers' Compensation Act sets standard for safety in the workplace and ensures workers get benefits for on-the-job injuries, regardless of who is at fault. In return, workers give up their right to sue their employers for negligence.

Income Tax Act, Section 153 details the legal requirements for employers to make deductions from employee's wages for Canada Pension, Employment Insurance and income taxes. Canada Customs and Revenue Agency (CCRA) formerly Revenue Canada enforces compliance with the Act.

EMPLOYEE OR INDEPENDENT CONTRACTOR

Employee or independent contractor status is determined by factors in the work situation. An independent contractor may actually be an employee or the reverse may be applicable. The designation does not determine the reality. It is a complex matter that is not controlled by a single factor. Canada Customs and Revenue Agency and Employment Standards board will review company practice for independent contractor treatment of workers and have the authority to change the status retroactively.

An independent contractor means that the individual is self employed and the provisions of the legal statutes relating to employees do not apply. For example, there would be no requirement to pay vacation pay, minimum wage, overtime (Employment Standards Act) or withhold premiums from gross pay for remittance purposes (Income Tax Act).

DEFINITIONS (CCRA publication RC4110)

Employee: An individual who serves an employer

Employer/employee relationship: A contract of services. Verbal or written agreement in which an employee agrees to work on a full-time or part-time basis for an employer for a specified or indeterminate period of time, in return for salary or wages.

Business relationship: A contract for services

Independent contractor: Self-employed individual who has a business relationship with the payer.

EMPLOYEE/INDEPENDENT CONTRACTOR STATUS

The factors determining employee/independent contractor status for employment standards and CCRA are similar. To determine the nature of the relationship, the terms and conditions may be analyzed as they relate to four factors:

1. Control: Who determines where, when and how the work will be done.
2. Ownership of tools
3. Chance of profit / Risk of loss
4. Integration

Following are a set of defining questions relating to the above factors.

CONTROL

Who decides:

How the work is to be done?
Time frames?
Hours of work?
Work location?
Whether work must be redone?
Territory to be covered?
Periodic activity reporting?
Standards to be met?

Who is responsible for:

Planning the work to be done?
Training?
Related costs?
Hiring helpers?

CHANCE OF PROFIT/RISK OF LOSS

Who is responsible for:

Repair costs to equipment?
Liability insurance?
Office expenses?
Delivery and shipping costs?
Performance of work?
Quality of the work?
Costs related to bad debts?

OWNERSHIP OF TOOLS

Who has invested in and supplies:

Equipment and/or tools
or covers rental costs?
Maintenance for equipment /tools?
Materials?

If "payer" is the answer to most of the above questions, then likely an employer/employee relationship exists. It means that the payer or employer has control owns the equipment tools and materials to do the work and stands to gain the profit or experience a loss. The worker has little control and does not have risk of a loss. The worker will get paid whether there are losses or not.

INTEGRATION

How integrated is the worker's activities with the payer's? This may be the final determining factor. Where the worker is acting on his/her own behalf and fits the payer's business in with his own activities, likely a business relationship exists

In cases where the worker is dependant on the payer and acts on behalf of the employer, an employer/employee relationship exists.

Examples showing how the factors are evaluated are presented in the CCRA publication Employee or self-employed (RC4110) and A guide to the Employment Standards Act.

COMMON MISUNDERSTANDINGS

(Summarized from the Guide to the Employment Standards Act)

An employer may wish to treat an employee as an independent contractor usually to avoid additional administrative procedures and payment of benefits, e.g. overtime or vacation pay. In some situations the independent contractor status may be advantageous for the employee in enabling him/her to claim some expenses otherwise not deductible. The employer and employee may declare the independent contractor status verifiable by focusing on just one area of the relationship.

A common misunderstanding is that one or a combination of the following factors establishes a worker as an independent contractor. Employment Standards and Canada Customs and Revenue Agency will look through these arguments and determine the relationship based on all the facts.

Agreement: A person who signs an independent contractor agreement is not necessarily an independent contractor. It is not what you say you are, but the reality of the work relationship that determines if you are an employee or not.

Charges GST: GST numbers are provided upon request. The requester may not be required to collect GST.

No Deduction for Income Tax, EI or CPP: The employer may not be complying with the Income Tax Act.

Person sets own hours and is not actively supervised: The business may be informally run.

Works for several businesses: A person may be moonlighting.

Submits a bill for labour provided: It may be a record of the hours worked.

Drives their own vehicle/provides own tools: A condition of employment may be that a person uses their own vehicle and provides their own tools.

WHAT HAPPENS IF THE RELATIONSHIP IS MISINTERPRETED

Canada Customs and Revenue Agency performs periodic payroll audits to determine whether remittances are correct and complete. The auditor will also review payments to independent contractors to determine the nature of the relationship. If it is ascertained that an employer/employee and not a business relationship exists then the payer will be liable for the Canada Pension and Employment Insurance premiums that should have been withheld from the employee as well as the employer's premiums for the entire period of employment. Penalties and interest may be charged.

The Employment Standards Branch, a department of the Ministry of Labor does not perform random audits, but will investigate complaints. The criteria used by Canada Customs and Revenue Agency and the Employment Standards Branch to determine the work relationship is similar, but the two agencies work independently.

If Employment Standards determines that an employer/employee relationship exists, then the employer may be liable for vacation pay, minimum wage, overtime pay and length of service compensation (severance pay) for the duration of the employment period.

EMPLOYER/EMPLOYEE RELATIONSHIPS

Employer requirements

- Apply for a business number from Canada Customs and Revenue Agency and register as an employer.
- Withhold premiums for Canada Pension, Employment Insurance and income tax from wages paid.
- Remit the deductions made from wages and the employer's portion of Canada Pension and Employment Insurance premiums. Remittances are to be made by the 15th of the following month. If the average remittance is less than \$1,000 remittances may be made quarterly. If monthly premiums are greater than \$15,000, remittances must be made more frequently.
- T4's which report employee gross income and withholdings are prepared annually and distributed to employees by February 28th of the following year. Copies of the T4's and a summary must be sent to Canada Customs and Revenue Agency.
- Register with Workers Compensation Board and remit payments based on the assessment rate and wages paid.

Employee responsibilities

- Prepare a personal income tax return for the year in which the wages were received (not earned) reporting the T4 amounts for gross income and deductions for Canada Pension, Employment Insurance and income tax withheld. Obtain form T2200 Conditions of employment from the employer (if applicable) which will indicate eligibility to deduct employment expenses. Report employment expenses on line 229 of the personal income tax return.

BUSINESS RELATIONSHIP (INDEPENDENT CONTRACTOR)

Employer requirements

- If the worker has been paid more than \$500 or income tax has been deducted then the employer must issue a T4A showing the gross amount paid for the year.

Employer's Guide - Hiring and Employment - Legal Obligations

- If a business relationship exits, employment premiums will not be withheld from amounts paid and the worker will not be entitled to make a claim to collect employment insurance.
- Before the independent contractor begins work, obtain a clearance letter from Workers' Compensation which will tell you whether the business or the individual is registered with WCB and paying regular premiums. If the independent contractor you hire is not registered or not making payments, the employer could be liable for the insurance premiums owing in connection with the work or service performed on the employers behalf.

Independent contractor responsibilities

- Apply for a business number and register with Canada Customs and Revenue Agency for G.S.T. if gross billings for the year will be in excess of \$30,000. G.S.T. returns may be filed quarterly or annually.
- At the end of the year, prepare and file a personal tax return reporting net income as income from self-employment. Net income is determined by revenue earned (even if not received) less expenses relating to the work undertaken. The liability for Canada Pension will be calculated and included in the total taxes payable.
- Register with Workers' Compensation Board. Registration may be a contract requirement or necessary for personal option protection. It is mandatory if helpers are hired by the independent contractor.

T2200 DECLARATION OF CONDITIONS OF EMPLOYMENT

The employee may be required as a condition of employment to use his/her own vehicle to perform work or to work from an office in their own home. The employer may reimburse the worker, usually based on a rate per kilometer for vehicle use or the actual expense. The employee may not be reimbursed at all or at a low rate. In this case the employer should issue a signed T2200 to enable the employee to claim the actual expense on their tax return. The form T2200 is available for download from Canada Customs and Revenue Agency's website.

EMPLOYMENT CONTRACTS (Employer/employee relationship)

An employment contract is an agreement between an employer and an employee that explains the employment relationship. Contract terms will vary from person to person and employer to employer. A contract may regulate only one aspect or cover the entire employment relationship. Contract terms can regulate how employment disputes are solved and can spell out what rights employees have in the work they create.

Contracts cannot waive employee rights established by law. For example, if the employer is required to pay overtime, a valid contract cannot be drawn up waiving the right to overtime.

SAMPLE LETTER CONTRACT

To be executed by both parties before employment commences.

Letterhead

Date

Dear << blank >>

We are pleased to confirm our offer of employment and your acceptance on the following terms:

You will be starting with us on <<blank>> as <<blank>>.

In this capacity you will be responsible for all of our <<blank>>.

You will be report directly to <<blank>> and will work closely with <<blank>>.

We have agreed that your salary will be paid twice monthly on the basis of \$<<blank>> per year. In accordance with standard company policy for all personnel, your employment is probationary for the first <<blank>> working days. The purpose of a probationary period is to provide the employer with the opportunity to assess your skills and suitability in the position of <<blank>>, and your ability to work in harmony with others in the organization. During this period the employer retains the discretion to terminate your employment for any reason without notice.

You will be entitled to participate in those benefit plans made available by the company to personnel at your level. A booklet describing the current insurance programs is enclosed. Holiday pay and vacation entitlement will be in accordance with company policy. The current policy is set out in the enclosed booklet.

It is always difficult to consider termination just when a new relationship is starting out but it is important that you are aware of, and agree to, our corporate policy in cases of termination. Once the probationary period is completed, employees receive {two} weeks' notice of termination, or, at the employer's discretion, pay in lieu thereof, plus all payments or entitlements prescribed by the <<blank>> and severance pay if applicable. The provisions of the paragraph will not apply in circumstances where the employee resigns from employment or is terminated for cause.

<<blank>>, we look forward to having you join us and given everything you have told us about yourself, we have no doubt this will prove to be a very successful relationship.

You will be required to sign and return our standard Confidential Information Agreement, which is attached to this letter.

Should you wish to accept this offer of employment on the terms and conditions set out in this employment agreement, please sign, date and return this letter to me on or before <<blank>>. The extra copy of this letter is for your personal files.

EMPLOYEE'S AGREEMENT

I have read, understood and agree with all of the foregoing. I have had a reasonable opportunity to consider this letter and the matters set out therein. I accept employment with the employer on the terms and conditions set out in this letter.

Date << blank >>

Signature of employee

EMPLOYER/INDEPENDENT CONTRACTOR AGREEMENTS are contracts for services and tend to be very particular to the type of service provided. The organization doing the hiring must take care to properly structure the relationship otherwise it may be determined that an employment relationship exists.

Points to consider in setting up an agreement with an independent contractor

- The agreement may be set up in the form of a purchase order.
- Payment is based on the job to be done, and not on the number of hours worked.
- There is no reimbursement for vehicle and/or office expense. These expenses are part of doing the work contracted for.
- The independent contractor supplies all the equipment to be used
- The independent contractor plans the work to be done.
- The independent contractor is responsible for additional training.
- The independent contractor is responsible for hiring and paying helpers.

EMPLOYEE HANDBOOK

A handbook directed to employees is not a legal requirement. However, it is a useful communications tool when the organization has grown to the point where management does not have day to day contact with employees. It provides information that is standard in nature and generally outlines employment requirements and expectations. The content will vary depending on the company's culture and needs.

The following is a suggested outline for an employee handbook, each area may be modified or developed further. Numbers should be kept to a minimum to ensure the handbook does not become outdated. The wage outline could be in the form of an insert.

Contents

- Welcome message to new employees which may be in the form of a letter from the organization's chair or president.
- History or background of the organization.
- Description of the services or products provided by the organization.
- Policy on wage reviews and promotions, wages, wage grid.
- Hours of work, work week, employee records, time cards.
- Employment expenses, mileage, reporting.
- Employee benefits, MSP, Dental, RRSP, Sick leave, cost of benefits.
- Annual vacation, statutory holidays.
- Rules of the organization and the chain of command.
- Employee working conditions and safety standards.
- Job descriptions.
- Board members.
- Media procedures.
- Union position, union or non-union statement.
- Employee statement. Verification that the employee has read the handbook.

REFERENCES

CANADA CUSTOMS AND REVENUE AGENCY

RC4110 – Employee or Self-Employed
RC2 The Business Number and your Revenue Canada Accounts
T4001 Employers' Guide to Payroll Deductions – Basic Information
T4044 Employment expenses

www.ccr-a-drc.gc.ca

Telephone 1-800-959-8281

BC HUMAN RIGHTS COMMISSION

www.bchrc.gov.bc.ca

Telephone 1-800-663-0876

MINISTRY OF LABOUR

A guide to the Employment Standards Act

www.labour.gov.bc.ca

Telephone 1-800-663-3316

WORKERS COMPENSATION BOARD

www.worksafebc.com

www.wcb.ns.ca

Telephone 1-888-922-2768

Acts and Regulations may be purchased from:

Crown Publications Inc.
521 Fort Street
Victoria, BC V8W 1E7

International Travel Maps
552 Seymour Street
Vancouver, BC V6B 3J5
Tel: (604)687-3320

Seymour River Hatchery Employee Handbook

Janice Jarvis, Mike Mayers, Garth Kitson

The Power of Employee Handbooks

Gene Levine