



A Guide for Business Owners:

Employees & Independent Contractors

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November 2019



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Employees & Independent Contractors



What's the Difference?

This employer guide explores the difference between employees and independent contractors to help employers avoid common pitfalls. Do you use independent contractors in the workplace? Do you have a written independent contractor agreement for such workers?

The Employment Standards Code (ESC) applies to most employees in Alberta, including full-time, part-time, temporary, and permanent workers. However, the ESC does not apply to independent contractors, which is why understanding the key differences between employees and independent contractors is so important. Use this resource guide to gain a better understanding of Alberta's labour laws and apply our best practices to your business.

Independent contractors are not governed by the Employment Standards Code and do not have the same entitlements as employees. Calling a worker an independent contractor, even if the worker agrees, does not necessarily make them one.



The Differences Between Employees & Independent Contractors

The ESC is designed to protect as many employees as possible and to ensure they receive basic employment standards such as the minimum wage, hours of work, and leaves.

The ESC defines an employee as “a person... who performs work for an employer for wages, a person who supplies services to an employer for wages, a person who receives training from a person who is an employer and/or a person who is a homemaker”.

Independent contractors are not considered employees and are therefore not protected by this legislation.

Courts have developed tests ([Can we site the tests being referred to here?](#)) that are used for determining a worker’s classification. The assessment evaluates how much direction and control the company has over the worker, whether the person works for other organizations, whether they use their own tools and equipment, and whether there is a chance they can earn a profit or be at risk of a loss.

Common Misconceptions

The following are some common factors that are not, on their own, enough to determine that a worker is an independent contractor:

- They have agreed to be an independent contractor
- They submit invoices for payment
- They don’t pay taxes or employment insurance
- They work at more than one job
- They drive their own vehicle
- They provide their own tools

What if a worker is found to be an employee?

If a business owner has engaged someone as an independent contractor, but after applying the relevant legal test the person is found to be an employee, there may be serious consequences for the business.

Employees are entitled to the protections of the ESC and if they have not been given the basic entitlements set out therein, the employer will be obligated to provide them. This includes, among other things, minimum wage, holiday pay, vacation pay, overtime pay, and termination pay. Indeed, the employer will have to provide these entitlements retroactive to the start of the employment relationship.

What are the powers of the Ministry of Labour?

The Ministry of Labour has wide-ranging powers when it receives a claim from a current or former worker. The Ministry can investigate complaints of misclassification, inspect records, issue payment orders, and fine employers for contravening the ESC.

Employer FAQs

What are employers asking about independent contractors and employees?

1. What is the main difference between an employee and an independent contractor?

While courts use a legal test with a variety of factors, generally, an independent contractor is someone in business on their own and not under the direct control or direction of an employer.

2. Can I designate someone as an independent contractor if they agree to it?

No. Even if someone agrees to be an independent contractor, that does not automatically decide the

issue. What matters is the nature of their working relationship with you.

3. What if they do work for other people?

The legal test is not based on only one factor. Working for someone else is just one factor to consider when determining if someone is an independent contractor. An employee can always have more than one employer.

Learn More

If you have questions about the differences between an employee and independent contractor, the Ministry of Labour, or the Employment Standards Code, call Peninsula today. We are dedicated to providing small business owners with HR support.

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