

## Independent Contractors

Independent contractors are not covered under Manitoba's employment standards. The laws for minimum wage, vacations, general holidays, and termination of employment, among other standards, do not apply to independent contractors. But some employees are mistakenly classified as independent contractors.

It is important for employees to be correctly classified so that they receive proper wages and other entitlements provided under *The Employment Standards Code*. Employment Standards enforces payment of wages where an employee has been incorrectly classified as an independent contractor.

### **What are the differences between an employee and an independent contractor?**

Many factors may be used to distinguish an employee from an independent contractor. Each situation is unique and must be assessed based on the specific circumstances of the relationship between the person performing the work and the person who pays for the work.

The [Employee vs. Independent Contractor Chart](#) at the end of the fact sheet identifies some common factors that are used by Employment Standards, the Manitoba Labour Board and the courts. It is provided as a guide to assist in determining if a worker is an employee – and, as such, entitled to Manitoba's minimum standards – or an independent contractor.

### **Why is it important to distinguish an employee from an independent contractor?**

By law, employees in Manitoba are entitled to certain specified minimum standards. An employee who is misclassified as an independent contractor may not be receiving these entitlements. Employers who fail to pay an employee properly are liable for unpaid wages and may be subject to monetary penalties.

### **What if someone believes he or she has been incorrectly classified as an independent contractor?**

Individuals who feel they may be an employee, and are owed wages, can file a claim with Employment Standards. An officer will make a determination if the person is an independent contractor or an employee for the purposes of *The Employment Standards Code*.

## Are written agreements enough to establish whether a worker is an employee or independent contractor?

A written agreement is just one factor that is considered when determining if an individual is an independent contractor or an employee. Simply saying that the worker is an independent contractor, or having a lawyer prepare an agreement, does not legally or definitely ensure the relationship. Working relationships vary greatly and the differences between an employee and an independent contractor can be complex.

## Does Employment Standards accept the determination of another government agency that finds that an individual performing work is an independent contractor?

Government agencies, such as Revenue Canada, may assess a working relationship to determine if the person performing work is an independent contractor or an employee. Determinations made by these other bodies may be taken into consideration but are not binding for the purposes of applying The Employment Standards Code.

## Employee vs. Independent Contractor Chart

Criteria	Employee	Independent Contractor
Supervision/ Control	<p>Employees are under the direction and control of the employer. They are subject to performance standards set by a superior (e.g. owner of business, manager, etc), even if control is not directly exercised.</p> <p>Control includes hours, work duties, when, where and how work is to be performed.</p>	<p>Independent contractors operate as their own business. They are not subject to regular performance management by another person or company.</p> <p>Independent contractors can decide how, when, where to perform work. They can decide on their own hours and work duties.</p>
Who Performs the Work	<p>An employee is hired as the specific person expected to perform work.</p> <p>Employees are not authorized to hire their own staff or help without approval of person or company.</p> <p>They must devote their time to employer's business, and may be restricted from working for others in same industry.</p>	<p>There is no expectation that a specific person will carry out all or even part of service.</p> <p>Independent contractors frequently hire their own staff or help to assist in completing work.</p> <p>They are free to work when, and for whom, they choose.</p>
Ownership of Tools	<p>Employees often work for a person or company who provides the materials and equipment to perform work, and who is responsible for the costs</p>	<p>Independent contractors are expected to provide most of the investment needed to complete work, including the tools,</p>

	<p>of repairs, insurance and operational costs, such as fuel, for instance.</p> <p>Often employees are reimbursed for these expenses if they are expected to pay for them (e.g. mileage expenses).</p>	<p>materials and equipment required to do the job.</p>
Chance of Profit/Risk of Loss	<p>Employees earn wages. They typically do not assume a risk of loss associated with their work or have the chance to make a profit. Prices for the goods or services they are providing are set by another person.</p> <p>Employees are limited to working the hours authorized by another person or company.</p> <p>Employees typically cannot make a profit or loss by making good or bad decisions.</p>	<p>Independent contractors have full control to maximize profit as a price maker (the price for the service provided is set by the contractor).</p> <p>They may take as many jobs, and work as many or few hours as desired, to increase or decrease income.</p> <p>They can see a profit or loss as a result of services provided.</p>
Integration	<p>Employees are hired to perform tasks related to the core purpose of the business for whom they are working.</p>	<p>Independent contractors provide specialized services to clients and promote their business through advertisements.</p> <p>They typically maintain their own business phone number and office space.</p> <p>Independent Contractors are usually separate from the client's business and are not integrated or merged into it.</p>
Payment	<p>Employees are paid on a regular basis – such as bi-weekly or weekly - or based on the hours worked or commissions earned.</p> <p>Source deductions are remitted by another person or company.</p>	<p>Independent contractors collect income by invoicing clients for services on jobs completed.</p> <p>Independent contractors are responsible for remitting source deductions for employees.</p>
Length of Employment Relationship	<p>Employees often work for the same person or company on a frequent and ongoing basis.</p>	<p>Independent contractors are typically hired to provide a specific service with a defined end date.</p>

## **For more information contact Employment Standards:**

Phone: 204-945-3352 or toll free in Canada 1-800-821-4307

Fax: 204-948-3046

Website: [www.manitoba.ca/labour/standards](http://www.manitoba.ca/labour/standards)

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including The Employment Standards Code, The Construction Industry Wages Act , The Worker Recruitment and Protection Act, or contact Employment Standards.

**Available in alternate formats  
upon request.**

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