

Summary: The Real Estate Council of Alberta has adopted the meaning of “employee” as described in the Alberta *Employment Standards Code*.

There is no definition of the word employee in the *Real Estate Act*. As such, in formulating an interpretation of this word, reference is made to other Alberta legislation and Alberta case law.

The Real Estate Council of Alberta has adopted the approach taken in the Alberta *Employment Standards Code*. Thus, the word “employee” in the *Real Estate Act* and Rules will be interpreted as meaning:

an individual employed to do work who received or is entitled to wages and includes those individuals whose employer controls, directly or indirectly, the way the work is done, the work methods used, the right to hire or fire, the wage or salary and the time, place and manner in which the work is to be done. The work done must be done as an integral part of the business and not only an accessory to it.

Commission sellers fall within the definition of employee for purposes of the Alberta *Employment Standards Code* (i.e. commissions are “wages”). This is recognized as being so for purposes of the *Real Estate Act*.

There may be federal statutes that define and use the word “employee” in a different manner than as provided for above. The Real Estate Council of Alberta does not take any position in regard to the manner in which the term employee may be used in other legislation. This would include any interpretation of the word “employee” under the *Income Tax Act*.

Labour Standards has indicated to RECA that there is a four-fold test for determining whether an individual is doing work as an employee or as a contractor.

- 1) Direction and Control. Employers usually have control over the activities of an employee (hours of work, etc.). An employee usually only works for one employer and is economically dependent on that employer.
- 2) Ownership of Tools and Equipment. An employee usually uses the tools and equipment of his or her employer.
- 3) Chance of Profit. An employee paid an hourly rate, salary, commission or other form of incentive pay would not have a chance of “profit” in the usual sense as they are not engaged in any real entrepreneurial exercise.
- 4) Risk of Loss. Employees run no risk of incurring a loss.

Additionally, an employee cannot be a corporation.