

EMPLOYEES

Purpose: This bulletin describes the meaning of an employee under the *Real Estate Act* (Act).

This bulletin applies to industry professionals and to consumers to whom the Act does not apply and to their employees or potential employees.

There is no definition for employee in the *Real Estate Act* (Act). The Real Estate Council of Alberta (RECA) uses the approach Alberta Employment Standards uses. Under the Act, RECA interprets employee to mean:

“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.”

RECA has adopted the four-step test to determine if an individual is an employee or a contractor.

1. **Direction and Control:** An employer exercises control over the activities of an employee; where and when an employee works. For example, an employer may determine the hours of work, payment method and work facilities.
2. **Ownership of Tools and Equipment:** An employer usually supplies tools, equipment and materials to an employee. For example, an employer provides a computer, stationary supplies and the use of telephone and office equipment.
3. **Chance of Profit/Risk of Loss:** An employee paid an hourly rate, salary, commission or other form of incentive pay for labour or services would not have a chance of “profit” in the usual sense, as they do not engage in any real entrepreneurial exercise. An employee’s rate of pay is independent of the employer’s sales, profits or losses.
4. **Integration:** An employee is part of the employer’s business and depends on one income source. A contractor is in business for his or her own benefit and relies on several income sources.

An employee cannot be a corporation. Another step to consider if an individual is an employee is who pays the employer portion of the Canada Pension and Employment Insurance Plans?

Commission sellers are employees for purposes of the Alberta *Employment Standards Code* (i.e. commissions are “wages”). This is also true for purposes of the Act.

INFORMATION
BULLETINS

Last Revised April
2014

© 2014 RECA