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July 2016

Motel and Campground Managers and Caretakers

The following information is provided as a guide to the Employment Standards Act (the Act) and Regulation (the Reg) to assist owners, operators and employees of motels and campgrounds in British Columbia.

Employee or independent contractor

Determining whether a person is an employee within the meaning of the Act is done by looking at the circumstances of each individual case. The Act contains definitions of “employer” and “employee”, and various tests have been developed that are applied by the courts, the Employment Standards Branch, and the Employment Standards Tribunal.

Section 1 of the Act defines “employee” and “employer” as follows:

"employee" includes

- a) a person, including a deceased person, receiving or entitled to wages for work performed for another,
- b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
- c) a person being trained by an employer for the employer's business,
- d) a person on leave from an employer, and
- e) a person who has a right of recall;

"employer" includes a person

- a) who has or had control or direction of an employee, or
- b) who is or was responsible, directly or indirectly, for the employment of an employee;

These definitions are very broad, and are often not enough to decide whether a person is an employee or a contractor. Instead, the total relationship of the parties must be examined, while keeping in mind the question “whose business is it?” There are many factors to consider, such as:

- The level of control the business owner has over the worker’s activities;
- Whether the worker hires his or her own helpers;
- The degree of financial risk assumed by the worker;
- The degree of the worker’s responsibility for investment in and management of the business; and
- The degree of the worker’s opportunity for profit in the performance of tasks.

The more the business owner supplies materials, provides tools, controls expenditures, and retains direction and control of the way the business is run, the more likely it is that an employer/employee relationship exists. *continued...*



Example

Bill and Sandy enter into a contract with a motel owner in which, in exchange for a monthly salary, they perform a variety of tasks around the motel including taking reservations and checking in guests; responding to guest complaints and concerns; supervising housekeeping staff; checking rooms; removing snow; cutting grass; completing a daily cash report and monthly reports; handling bills and answering mail, etc. They are given four days off every month, and the motel owner provides relief for those days. They take direction about the work to be done as well as the methods to be used. The motel owner provides the equipment they need to perform their tasks, and they live in a suite behind the front desk.

Bill and Sandy are employees of the motel owner. They are not free to hire someone else to perform their duties, nor are they free to determine how many days they will take off and when. They get paid the same monthly salary regardless of how full or empty the motel is, so their efforts do not affect their financial return. There is no chance of profit or risk of loss to them. They follow procedures and run the business as required by the motel owner. They are not carrying on their own business, they are working at the motel owner's business.

Determining whether a motel or campground manager is a “manager” under the Act

The definition of “manager” in the Act reads as follows:

"manager" means

- a) a person whose principal employment responsibilities consist of supervising or directing, or both supervising and directing, human or other resources, or
- b) a person employed in an executive capacity.

In order to determine whether someone is a manager it is necessary to evaluate the extent of the actual authority the person exercises. Typically, a

manager has the power of independent action, autonomy and discretion. A manager has the authority to make final decisions, not simply recommendations, relating to supervising and directing employees or to the conduct of the business.

This would include things like:

- Hiring, firing and disciplining employees;
- Authorizing overtime, time off or leaves of absence;
- Calling employees into work or laying them off;
- Establishing or altering work schedules and training employees;
- Committing or authorizing the use of company resources;
- Authorizing extraordinary or capital expenses; and
- Being involved in decisions relating to the conduct of the business.

Example

Susan was hired to run a motel. She speaks to the motel owner every day on the phone. She interviews prospective employees and makes recommendations which are subject to final approval from the owner. If she is unhappy with an employee she consults with the owner, who makes the decision as to what Susan should do. The wage rates for these employees are set by the owner. Susan schedules hours for housekeeping staff based on a formula set out by the owner. She has some discretion to offer room discounts within the policy set out by the owner. She has access to a petty cash fund to buy supplies, but requires approval for any expenditures over \$100.

Susan is not considered to be a manager under the Act. She has very little ability to exercise any independent action or discretion. She needs to get approval from the motel owner before finalizing issues relating to the day-to-day running of the motel. She has no actual authority to independently manage the motel on her own.

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Hours of work and overtime

Managers are excluded from the hours of work and overtime provisions of the Act. It is very important for motel/campground owners to establish whether or not their managers are performing the sort of functions that bring them within the definition of a “manager” under the Act. If motel or campground managers are not managers under the Act, they are entitled to these provisions.

If they are managers under the Act, they may still be entitled to be paid for all hours worked, although not at premium rates. This will depend on the terms of their employment contract. If a salary is based on a certain number of hours per week, any hours worked in excess of those hours must be paid. The rate is determined by a formula set out in the definition of “regular wage” in Section 1 of the Act.

Statutory holiday pay

Managers are excluded from the statutory holiday provisions of the Act, so it is very important that motel/campground owners correctly identify whether or not their managers perform functions that bring them within the definition of a “manager” under the Act.

Minimum wage

The minimum wage in B.C. is:

- September 15, 2015 - \$10.45 per hour;
- September 15, 2016 - \$10.85 per hour.

If employers pay more than minimum wage, they must still comply with the other requirements of the Act.

Paying more than the minimum requirement in one area does not ever mean that an employer can pay less than the minimum requirement in another area. For example, paying more than four percent vacation pay does not mean an employer can avoid paying statutory holiday pay.

An employer who chooses to pay an employee \$12 per hour must calculate overtime and other statutory benefits on that wage rate, and not on the minimum wage.

Minimum daily hours

Section 34 of the Act provides that an employer must pay an employee who reports to work for a minimum of two hours work, unless the employee is unfit to work or fails to comply with WCB rules. If the employee had been scheduled to work more than eight hours that day, the minimum pay is four hours, with the same exceptions.

If work is suspended for reasons completely beyond the employer’s control, the minimum pay is two hours.

The requirement to pay for minimum daily hours only applies once each day. If, after having completed a shift, employees are called back to work, or are interrupted while on call in their own residence, they are entitled to be paid only for the extra time they work, not an extra two or four hours.

Record of hours worked

Employers are required to keep records of how many hours every employee works each day, regardless of whether the employee is paid by the hour or is on a salary. Employers should ensure that they provide time sheets that are adequate for employees to document break times during the day and any interruptions to their personal or on-call time.

These time sheets should be remitted to the employer at the end of each pay period so any issues regarding number of hours worked, need for relief workers, or other matters, can be addressed in a timely manner.

At work or on-call

Section 1 of the Act defines “work” as follows:

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"work" means the labour or services an employee performs for an employer whether in the employee's residence or elsewhere.

The Act requires that an employee be paid for all work performed even if the work is done in the employee's residence.

Section 1(2) of the Act refers to "on call" employees as follows:

- (2) An employee is deemed to be at work while on call at a location designated by the employer unless the designated location is the employee's residence (emphasis added).

An individual or a couple hired to run a motel, and who live in a suite in the motel, usually behind the front desk, do not have to be paid when they are on call in their residence. If they are interrupted to check in a guest or attend to something, that is work, and they are entitled to be paid for that time.

When the live-in managers take their days off, relief managers may fill in. As the relief managers typically have a residence elsewhere and only stay at the motel for the relief period, any time they spend on call does not take place in their own residence. They are actually away from their own residence while working at the motel.

For this reason, relief managers whose normal residence is away from the hotel are entitled to be paid for all hours they spend working or on call at the motel, as they would be on call at a place designated by the employer. Hours that the relief managers are off-duty, with no expectation that they be present or available for work, do not have to be paid.

Campground managers who have a permanent residence elsewhere are not considered to be at their residence while they are at the campground.

They, like relief managers, are actually away from their residence while they are at the campground.

They are entitled to be paid for all hours they are required to be working or on call at the employer's premises. Off-duty hours, where the campground managers are on their own free time, with no expectation that they work or be available to work, do not have to be paid.

Motel or campground owners may use the services of caretakers to oversee the property. These caretakers may live on the property, in accommodation provided by the owner. If this accommodation is the caretaker's only residence, they are not entitled to be paid for hours spent on call in their residence. If the caretakers are only staying on site temporarily, and maintain a permanent residence elsewhere, they, like campground managers and relief managers, are not in their own residence.

Any on call hours would therefore be at a place designated by the employer, and they would be entitled to be paid for all hours spent working or on call. Off-duty hours, where there is no expectation that the caretaker work or be available to work, do not have to be paid.

With cell phones and other electronic devices more commonplace, it may be increasingly possible for employees to leave the premises while on call. If the employer and the employee are able to arrange a reasonable response time that does not overly restrict the employee's activities while on call, it may be possible for an employee to be on call, yet not "at a location designated by the employer". If this is the case, the employer does not have to pay the employee for on-call time.

Payment for living accommodation

If the managers are required to pay rent for their suite, arrangements can be made in various ways:

1. The managers can pay rent every month as they would in any other rental unit.
2. The employer and the employees can agree to deduct rent from wages. If this is done, the employer must obtain the employees' written consent. In the absence of written consent, the deduction would be unlawful and recoverable by the Branch in the event of a complaint.

If the suite is provided as part of the employment contract, the employer cannot later assess a value to the suite to offset amounts owing for wages, overtime, vacation pay or other entitlements under the Act. The value of the suite has no bearing on the amount of wages paid or owing to an employee.

For more information

Call: 1 800 663-3316 or 612-4100 in Prince George

Website: www.gov.bc.ca/EmploymentStandards

See also: [Employee or Independent Contractor Factsheet](#)
