
SECTION 12

PERSONNEL MANAGEMENT

12.02 EMPLOYMENT CONTRACTS

AUTHORITY: TREASURY BOARD

ADMINISTRATION: ALL DEPARTMENTS, CROWN CORPORATIONS
& AGENCIES TO WHICH THE CIVIL SERVICE
ACT APPLIES

12.02 EMPLOYMENT CONTRACTS

(1) GENERAL

(a) Introduction

The following sets out Treasury Board's policy, procedures and guidelines for employment contracts.

This directive has been subdivided into the following sections to provide easy reference to specific matters:

- (1)(b) Application of the Policy
- (1)(c) Contract Approval
- (1)(d) General Policy Statement on Use of Employment Contracts
- (1)(e) Authority
- (2) Checklist - Is an Employment Contract Appropriate?
- (3) Procedural Guidelines
- (4) The Employment Contract
- (5) Administering Employment Contracts

(b) Application of the Policy

This policy applies to all Provincial Government departments, as well as Crown corporations and agencies to which the *Civil Service Act* applies. For those entities subject to alternate legislation, the spirit and intent of the policy should serve as a guideline for those entities in developing their own policies.

This policy also does not apply to those appointments to the executive division enumerated in subsection 8(1) of the *Civil Service Act*.

(c) Contract Approval

Employment contracts for a term not exceeding one year, may be approved by the Minister Responsible. The Minister may also approve a maximum of two renewals for each employment contract. Employment contracts which exceed a term of one year, employment contract renewals where the total period of employment without a break in service exceeds three years, employment contracts which provide a salary level in excess of the Public Service Commission's recommended level, and employment contracts that provide benefits in excess of the Public Service Commission's recommended level, require the prior approval of Treasury Board.

(d) General Policy Statement on Use of Employment Contracts

As a general working principle, staff employed by Provincial Government departments are hired under the *Civil Service Act*.

In situations where an appointment under the *Civil Service Act* would not meet the needs of the department, an employee may be engaged under a contractual arrangement.

All employment contracts must be in writing, and signed by both the employee and the Minister Responsible. A copy of Government's Standard Employment Contract is appended as Attachment 12.02-I.

This policy does not apply to professional services contracts and consultant contracts. Individuals engaged under either of those contracts are not employees. While government may be found liable for its employees' negligence if such is committed in the course of employment, those who provide services under a professional or consulting services agreement are, generally liable for their own negligence.

(e) Authority

This policy and procedure direction was established by Treasury Board via Minute #422 (October, 1988) and has been amended by Management Board Minute #182/93 (August 4, 1993), Executive Council Decision #453/93 (August 11, 1993), Management Board Minute #021/95 (May 11, 1995), Treasury Board Minute #24/01 (April 25, 2001), Treasury Board Minute #61/01 (May 24, 2001) and Treasury Board Minute #325/04 (February 16, 2005).

In cases where an interpretation is required, such should be referred to the Fiscal Management Division of the Provincial Treasury who will make the interpretation or refer the matter to the Secretary to Treasury Board or to Treasury Board if a Board decision is deemed necessary.

(2) CHECKLIST - IS AN EMPLOYMENT CONTRACT APPROPRIATE?

Where circumstances indicate that an employer-employee relationship will exist with the person to be engaged under contract, an employment contract (and not a professional services or consultant contract) must be used.

An employer-employee relationship exists where the employer can specify when, where, how and under what conditions the work will be performed. Also, such a relationship normally dictates that, rather than perform a specific task or amount of work, the employee puts his

or her personal services at government's disposal for a specified period of time.

The presence of one or more of the following criteria will also indicate the likely existence of an employer-employee relationship:

- (I) the department or agency actively supervises the work;
- (ii) the department or agency provides the necessary tools, equipment and/or facilities to do the work;
- (iii) the individual has no opportunity to profit and is not exposed to any risk of loss;
- (iv) the individual is economically dependent on Government;
- (v) the individual is precluded from subcontracting or hiring others to do part or all of the work;
- (vi) the individual and his/her work are an integral part of the organization and its work.

(3) PROCEDURAL GUIDELINES

Following is a checklist/guidelines of departmental responsibilities and information that should be obtained as preparatory work prior to submitting the employment contract request to the Minister for signature:

(a) **Job Description** - develop a job description detailing:

- (I) duties and responsibilities of the position;
- (ii) qualifications and abilities required;
- (iii) terms and conditions of employment.

(b) **Job Analysis**

The department "**must**" forward the job description and information on the prospective employee to the Public Service Commission for analysis of the job and recommendation of salary level. The results of this analysis will assist the department in matching the job against existing classifications and determining an appropriate salary range and step. Where the Minister supports a salary in excess of the Public Service Commission recommendation, Treasury Board approval is required.

(c) **Benefit Analysis**

Where the benefits offered to the prospective contract employee deviate from those laid out in the Standard Employment Contract, the department "**must**" forward all relevant information to Employee Benefits for review. The results of this analysis will assist the department in determining proper benefit coverages. Where the Minister supports benefits that deviate from these recommendations, Treasury Board approval is required.

(d) Background/Factors

- Reason for requesting a contract rather than a term appointment, classified position, etc.
- If the contract replaces an existing classified position, the position number, name of previous incumbent and last date employed.
- Employment application containing the personnel information relating to the proposed contract employee including name, education, experience, etc.
- Although employment contracts normally are not approved for a term of more than one year, long-range plans regarding this position should be noted.
- If request is for a renewal, information re past contracts, term, salary, etc.
- Ensure that any deviations from the "standard" employment contract or compared salary for the job description proposed are noted with appropriate explanation.
- Reference any Executive Council or Treasury Board decisions directly related to the proposed contract.

(e) Financial

Financial information identifying the source of funding for the contract including appropriate account code, etc., and if the employment contract is to continue beyond the current fiscal year, the source of continued funding.

(f) Preliminary Discussions with Prospective Contract Employee

Arrange a meeting with any particular candidate(s) being considered for the job. The following matters should be reviewed:

- (I) clarify that no commitment to the individual can be made before departmental approval is obtained;
- (ii) salary range being considered by Government;
- (iii) benefit package;
- (iv) terms and conditions of employment;
- (v) answer any questions the individual has regarding the job.

(4) THE EMPLOYMENT CONTRACT**(a) General**

Attachment 12.02-I sets out the Standard Employment Contract which has been developed to assist users to ensure that all relevant issues are understood by both parties at the outset of the employment. The contract form has been developed with legal assistance to ensure that appropriate limitations on liability for the employer are in place in the event of a dispute. This is the form to be used unless peculiar circumstances render it inappropriate.

Only in special circumstances should an employment contract for a period greater than one year be approved.

All employment contracts must be signed on behalf of Government by the Minister responsible for the department, Crown corporation or agency concerned. All employment contracts shall be dated the day on which both signatures (or the last of the two signatures) are obtained.

(b) Specific Matters to Note

In paragraph 2 of the standard contract, the second sentence should be deleted if the position is not matched against a classification in the pay plan. In other words, if the position is not matched against a classification in the pay plan, the employee will not be eligible for any scheduled economic adjustments during the term of the contract unless the contract specifically so states.

In paragraph 4, the term of the contract commences on the date the employee actually starts work.

In paragraph 6, the list of benefits is the standard list offered to contract employees. Any additions or deletions should be carefully considered. The only additional benefits which may be permitted where circumstances warrant, are:

- protective clothing and equipment;
- overtime;
- standby pay;
- call-back pay.

In paragraph 7, indicate whether or not the employee is to participate in the Civil Service Superannuation Fund. Only contract employees who work at least 600 hours per year are eligible to participate in the Civil Service Superannuation Fund.

Contract employees who choose not to participate in the Civil Service Superannuation Fund will not be eligible in the future to purchase benefits related to the contract period for purposes of increasing their pensionable service.

In paragraph 8, the number of months' notice of termination the employer is required to give the employee must be determined. The appropriate period of notice depends to a large degree on the duration of continuity of employment the employee has enjoyed. Once an employee has two or three years of service, one month's salary may not be considered by the Courts to be sufficient. The fact that this service may have occurred under two or more contracts is not relevant if the contracts cover consecutive terms without a break in service.

Paragraph 8 also provides that the "notice" may be given in equivalent pay rather than as actual notice. This alternative may be helpful where it is not possible or appropriate for the employee to continue working during the notice period.

While not reflected in the standard contract itself, departments should be aware that employees who have accumulated many years service through successive contracts should not simply be terminated at the end of the current contract without some period of appropriate notice. As the appropriate notice period will vary from one set of circumstances to the next, legal advice on the length of notice (or amount of pay in lieu thereof) should be sought.

In Schedule "A", a detailed list of duties and responsibilities should be provided and should incorporate any unusual terms or conditions of employment, e.g. night or weekend work; work at a number of locations.

In Schedule "B", ensure that each item listed is actually reviewed with and initialled by the employee. This should be noted to protect the department in the event of a subsequent misunderstanding.

(5) ADMINISTERING EMPLOYMENT CONTRACTS

Departments are responsible to ensure that appropriate controls are put in place to monitor employment contracts. One individual, usually the departmental administrator, should be assigned the task of:

- (a) making any necessary adjustments to salary and benefits;
- (b) developing a bring-forward system so that sufficient time is available prior to expiry to determine whether a contract employee's services will continue to be required.

**STANDARD EMPLOYMENT CONTRACT
PROVINCE OF PRINCE EDWARD ISLAND**

THIS AGREEMENT made this _____ day of _____, A.D., _____.

BETWEEN:

GOVERNMENT OF PRINCE EDWARD ISLAND, as represented by the

(hereinafter referred to as the "Employer")

AND:

_____, of _____,
in the County of _____, Province of Prince Edward Island.
(hereinafter referred to as the "Employee")

THIS CONTRACT WITNESSETH that in consideration of the covenants and conditions herein contained, the parties hereto covenant and agree that the Employee shall be employed by the Employer upon the following basis:

1. The Employee shall assume all those responsibilities and diligently execute all those duties set out in Schedule "A".
2. The Employer shall pay the Employee as a/an _____
(Title and Step)
on the basis of a _____ hour work week, at the salary rate before deductions, of \$ _____, per annum effective the date of employment. The above-stated salary will be adjusted to reflect any negotiated increases applicable to the employee's position, title and step which occur during the term of this employment contract.
3. The Employer may make deductions for the Employee from salary payable to the Employee in such amount or amounts and for such purposes as are more particularly set forth in Schedule "B" hereto.
4. The term of this employment shall commence on the _____ day of _____, 20__ and terminate on the _____ day of _____, 20__ unless terminated on an earlier date in accordance with paragraph 8 hereof.

5. All of the provisions of the *Civil Service Act* Regulations from time to time in force respecting employees employed by the Employer on a contract basis shall be read as provisions of this Contract.
6. Notwithstanding the exclusion of benefits for contract employees as described in Part VI of the *Civil Service Act* Regulations, the Employee is entitled to the benefits listed below and which are subject to the terms and conditions or limitations on entitlement set out in the current Collective Agreement between the Employer and the Union of Public Sector Employees:
- a) Motor Vehicle Allowances
 - b) Vacation
 - c) Sick Leave
 - d) Statutory Holidays
 - e) Special Leave
 - f) Injury on Duty Leave
7. The parties agree that the Employee _____ participate in the pension plan (shall/shall not) known as the Civil Service Superannuation Fund. **The parties acknowledge that should the Employee choose not to participate in the pension plan for the period of this contract, the Employee will not be eligible in the future to purchase benefits related to the contract period as pensionable service.**
8. (a) Either party may terminate this Contract without cause by delivering a notice in writing to the other party by personal service or by registered mail ___ month(s) in advance of the date on which termination of this Contract is to be effective.
- (b) Notwithstanding any other provision of this Contract, the Employer may pay to the Employee an amount equal to _____ month(s) pay in lieu of notice. Provision of such payment by the Employer shall constitute provision of reasonable notice of termination to the Employee.

This is "Schedule A" to a Contract of Employment between the Employer and

_____ dated _____.

DUTIES AND RESPONSIBILITIES

The Employee agrees to execute diligently and to the best of his/her ability the duties and responsibilities listed hereunder:

