
SECTION 12

PERSONNEL MANAGEMENT

12.02 EMPLOYMENT CONTRACTS

AUTHORITY: TREASURY BOARD

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

EFFECTIVE DATE: MAY 2024

12.02 EMPLOYMENT CONTRACTS

(1) INTRODUCTION

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

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

- (2) Application
- (3) Contract Approval
- (4) General Policy Statement on the Use of Employment Contracts
- (5) Checklist - Is an Employment Contract Appropriate?
- (6) Procedures
- (7) The Employment Contract
- (8) Administering Employment Contracts
- (9) Interpretation

(2) APPLICATION

This policy applies to all Government departments, Crown corporations and agencies to which the *Civil Service Act* applies. For those entities subject to alternate legislation, the spirit and intent of this 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*.

(3) CONTRACT APPROVAL

The Minister Responsible may approve employment contracts for a term not exceeding one year, with a maximum of two renewals for each employment contract.

Treasury Board approval is required for employment contracts:

- that exceed a term of one year; or
- with renewals in which the total period of employment without a break in service exceeds three years; or
- that provide a salary level in excess of the Public Service Commission's recommended level; or
- that provide benefits in excess of the Public Service Commission's recommended level.

(4) GENERAL POLICY STATEMENT ON THE USE OF EMPLOYMENT CONTRACTS

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

When 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 services or consulting services contract are generally liable for their own negligence.

(5) CHECKLIST - IS AN EMPLOYMENT CONTRACT APPROPRIATE?

If circumstances indicate that an employer-employee relationship will exist with the person to be engaged, an employment contract, 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 inputs their services at Government's disposal for a specified period of time.

The presence of one or more of the following criteria indicates 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 all, or part, of the work;
- (vi) the individual and their work are an integral part of the organization and its work.

(6) PROCEDURES

Departmental responsibilities and information that should be obtained prior to submitting the employment contract request to the Minister for signature include:

- (a) **Job Description** - develop a job description detailing:
- (i) duties and responsibilities of the position;
 - (ii) qualifications and abilities required; and
 - (iii) terms and conditions of employment.

(b) **Job Analysis**

The department **must** forward the job description and information about 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 to match the job to existing classifications to determine an appropriate salary range and step. If the Minister supports a salary in excess of the Public Service Commission recommendation, Treasury Board approval is required.

(c) **Benefit Analysis**

If the benefits offered to the prospective contract employee deviate from those laid out in the Standard Employment Contract attached as Attachment 12.02-I, the department **must** forward all relevant information to Pensions and Benefits Division of the Department of Finance for review. The results of this analysis will assist the department in determining proper benefit coverages. If the Minister supports benefits that deviate from these recommendations, Treasury Board approval is required.

(d) **Background/Factors**

- Reason for requesting an employment 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.
- Long-term plans regarding the position and the work being completed should be noted.
- If request is for a renewal, information about 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.
- Any other information that supports the use of an employment contract.

(e) **Financial**

Financial information identifying the source of funding for the employment 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 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.

(7) 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 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 Employment 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; and
- call-back pay.

In paragraph 7, indicate whether or not the employee is to participate in the Public Sector Pension Plan.

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 if it is not possible or appropriate for the employee to continue working during the notice period.

While not reflected in the Standard Employment Contract itself, departments should be aware that employees who have accumulated many years of 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, for example, night or weekend work, or work at a number of locations.

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

(8) 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.

(9) INTERPRETATION

In cases where an interpretation is required, such should be referred to the Secretary to Treasury Board, or their delegated officer, who will make the interpretation or refer the matter to Treasury Board, if a Treasury Board decision is deemed necessary.