

HAIR STYLISTS

Chair Rental and the Employment Standards Act

The Employment Standards Act applies to people who are employees as determined by the Director of Employment Standards.

Under the Employment Standards Act, **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...

The stylist provides his/her own hand-held equipment, such as a blower. All other equipment and supplies belong to the salon. The stylist sets his/her own hours. The salon provides a receptionist, who books appointments. If there are no clients, the stylist does not attend. No record of hours of work is kept. The stylist buys supplies used from the salon.

Example 1: The stylist pays 50% of the amount charged to the client to the salon.

Example 2: The stylist pays the salon rent for use of its facilities, including the services of a receptionist. The rent charged does not reflect the amount of business done by the stylist.

The Director, to date, has found chair rental arrangements to be an employer-employee relationship.

Therefore the stylist is covered by the Act. In both cases described above, the Director found the stylist to be an employee.

The Employment Standards Tribunal has held that drivers who lease taxi-cabs are employees. The same analysis can be applied to stylists. No one factor will decide the issue. The whole character of the relationship will be taken into consideration.

Common Law Tests

The Director applies a broad interpretation to the definition of "employee" and uses common law tests developed by the courts to determine if a person is an employee. If a person looks, acts and performs work like an employee, the Director will usually find that person to be one.

Four Fold Test – examines the elements of control, ownership of tools, chance of profit and risk of loss.

Organizational Test – examines if the work is integral to the operation of the business. Since the business operated is a hairdressing salon, the hairdresser is an essential element of the business.

Economic Reality Test – answers the question 'whose business is it?' Is the salon owner in the business of providing hair care services to the public, or renting facilities to stylists?

Permanency Test – examines the duration of the relationship. The longer a stylist is with a salon, the

greater the likelihood that the stylist will be found to be an employee.

(See Factsheet *"Employee or Independent Contractor?"* for further details on these tests.)

Client Cards

An employer terminated a hair stylist because she had removed the client cards from the workplace. On appeal, the Employment Standards Tribunal decided that taking home the client cards did not amount to the stylist doing anything wrong, and she was therefore owed compensation for length of service ("severance pay")

The Tribunal further stated that the stylist was: "legitimately entitled to consider the client cards her own".

Going to Work Elsewhere

When a stylist was terminated for announcing he was going to work for a competitor salon in the near future, the Employment Standards Tribunal found that this did not provide the current employer with just cause to terminate employment.

Supply Deductions

An employer deducted the cost of supplies used by a stylist from the stylist's wages. Wages were commission (a percentage of the fee charged to the customer), from which the employer deducted "shop supplies". S.21 (2) of the Act prohibits the employer from passing on to an employee any of the employer's business costs. These deductions were found to be unlawful.

Training

A person who is being trained for the purposes of the employer's business is deemed to be an employee. When a salon brings in a person for a trial period, that person is entitled to at least the minimum wage for time spent at the workplace during the trial period. It is of no significance that the person might agree or volunteer to be trained or to undergo a trial period without payment of wages.

Minimum Daily Pay

An employee is entitled to minimum daily pay when being sent home because of a lack of business. An employee must be paid a minimum of two hours wages at regular rate for reporting to work on any day as required by the employer. If an employee is scheduled to work more than eight hours he or she must be paid a minimum of four hours.

Minimum Wage

An employee is entitled to at least minimum wage, currently \$8.00 an hour, regardless of the method of calculation of wages. If paid on a commission basis, the amount of wages earned in a pay period divided by the total hours worked during that period must meet or exceed minimum wage times the employee's total hours worked during that pay period.
