

Office in an Employee's Residence

July 2009

This publication is provided as a guide only. It is not intended as a substitute for the *Employer Health Tax Act* and Regulations.

This bulletin explains when an employer is required to pay Employer Health Tax (EHT) on the remuneration (includes wages, bonuses, benefits, etc.) of an employee who works from home. EHT may apply to the wages of employees who work from their homes located in other provinces or outside Canada.

When is a home office a fixed place of business?

An office in an employee's home is considered a fixed place of business if it is used in the day-to-day business of the employer. For example, meeting clients at an employee's home office for the showing of products, with a view to writing new orders, etc., would mean that the employer is carrying on a business. Therefore, the office would be a permanent establishment of the employer.

In general, an office that is used only for activities or services which are not concerned with the employer's main business focus would not be regarded as a permanent establishment. An office is not a permanent establishment if it is:

- maintained and controlled by the employee at the employee's choice and expense, for example, to set up appointments at the client's place of business, to prepare expense reports, etc.
- used only for storage of records or for promotional purposes including advertising or display of products.

Typically, the employer's business presence at the location will be publicly advertised by signs, phone listings, website information, etc. Further evidence of control of the premises by the employer would include some of the factors listed on the following page, under '**Does my employee's home office qualify as a fixed place of business?**'

Reporting to work at a fixed place of business

Employers are required to pay EHT based on amounts paid to employees who report for work in person at the employer's fixed place of business in Ontario. Thus, the remuneration of an employee who works out of a home office in Ontario that is considered a fixed place of business of the employer is subject to EHT.

An employee is also considered to report for work at a fixed place of business in Ontario if the employee is reasonably "attached to" the employer's business location without physically reporting there. This applies if the employee has a direct reporting relationship to a manager/supervisor based in Ontario and the employee resides and works in another province or country, but does not physically report for work at any fixed place of business belonging to the employer there (for example, if the employee's home office is not considered a fixed place of business).

Likewise, EHT does not apply to an employee who works from a home office in Ontario that is not considered to be a fixed place of business of their employer, if the employee is considered to be "attached to" a fixed place of business belonging to their employer that is located outside of Ontario.

Does my employee's home office qualify as a fixed place of business?

For the office in an employee's residence to qualify as a fixed place of business of the employer, the conditions of an employee's employment are reviewed based on factors such as the following:

- a. the office is a room or substantial area in the residence used only for the employer's business (i.e., the office is not used for any other purpose)
- b. the employee is required to provide an office as a condition of employment
- c. the office is maintained and controlled by the employer and therefore is normally accessible to other individuals employed by/or doing business with the employer
- d. sales orders which may be sent to the employer's head office for processing, are regularly accepted there
- e. the employer pays for supplies, furniture and office equipment costs, e.g., computer, phone, fax machine
- f. the office is advertised by phone listings, signs, sales or product brochures, websites, etc., to indicate its presence
- g. the residence is registered as a place of business and for property tax purposes
- h. any other factors which may indicate the home office as a fixed place of business.

Other possible factors indicating a fixed place of business on their own account may apply to the location such as: employee fills orders from a stock of merchandise, or a deemed fixed place of business based on an employee's general authority to contract, etc. See the Interpretation Bulletin, entitled 'Permanent Establishment'.

The Ministry of Revenue will review all the facts before concluding if an office in the employee's home qualifies for EHT purposes. To have your specific situation reviewed by ministry staff, please contact the ministry at the phone number provided below.

Written interpretation

To obtain a written interpretation on a specific situation not addressed in this publication, please send your request in writing to:

Ministry of Revenue
Tax Advisory Services Branch
Income Tax Related Programs Section
Employer Health Tax
33 King Street West, 3rd Floor
Oshawa ON L1H 8H5

Related publications

Other publications which provide further details on this topic include:

Permanent Establishment
Remuneration

More information

To obtain the most current version of this publication, or additional information, visit our website at ontario.ca/revenue and enter 506 in the find page field at the bottom of the webpage or contact the Ministry of Revenue at:

1 866 ONT-TAXS (1 866 668-8297)
1 800 263-7776 teletypewriter (TTY)

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