

Reference Guide

Important Note: Regardless of the complexity of an employee's job duties, an employee will only be allocated out-of-scope in instances where there is a fundamental conflict for the position to be in the bargaining unit as defined by *The Saskatchewan Employment Act* (SEA). The two criteria listed in the SEA which creates the fundamental conflict are as follows:

- Position whose primary responsibility is to exercise authority and perform functions that are of a managerial capacity; **and/or**,
- Position whose primary duties include activities that are of a confidential nature in relation to any of the following and that have a direct impact on the bargaining unit the person would be included in as an employee but for this paragraph:
 - (I) labour relations;
 - (II) business strategic planning;
 - (III) policy advice; and
 - (IV) budget implementation or planning.

The following should be taken into consideration, while completing the attached scope determination form. This guidance is broken down based on the criteria listed in *The Saskatchewan Employment Act*.

After reading the explanation below, please check the appropriate box indicating which of the criteria you are submitting this request under.

Position whose primary responsibility is to exercise authority and perform functions that are of a managerial capacity.

Should this request go before a third party, they will look at the primary and actual duties of the position. They will focus on the duties that can be characterized as managerial to determine if those duties are performed by the employee and to what extent the duties are performed.

Incidental managerial duties usually do not take a person outside the scope of a bargaining unit. Focus will be placed on:

- The part played by the incumbent in personnel or disciplinary matters;
 - Grievances: has actual authority to respond to Step 1 or Step 2 grievances. Can seek advice, but can proceed independent of that advice. In and of itself, the ability to respond to a grievance may or may not be a sufficient factor to remove a person from the bargaining unit. It tends to suggest a conflict of interest but such conflict may be more apparent than real depending on the size of the organization, the actual authority of the position, the amount of time spent in supervising and managing, and the nature of the grievances handled.
 - Discipline and Discharge: has written authority to give written reprimands or suspensions or recommend discharge; has written authority to demote; involuntary transfer, terminate employment or recommend termination of employment for non-culpable reasons; has final authority for probationary discharge. The factors listed are good indication of managerial authority. The authority must, in addition to being written, be "actual".
- The role played in major planning decisions or the formulation of budgets;
- The extent to which the incumbent acts independent of supervision or advice;
- The degree to which other employees look to the incumbent for direction or decisions; and,
- The impact decisions taken by the incumbent have on the terms and conditions of the employment of others in a bargaining unit.

It requires that the incumbent can "fundamentally affect the economic lives of his fellow employees so that he is inevitably put in a position that creates a conflict of interest with them."

As a general rule, third parties will find that those who only coordinate, direct and supervise the work of individuals are not performing functions of a managerial character and are not seen as an essential component of their employer's management, such that they need to be excluded from the bargaining unit. There is a distinction between managerial authority and leadership roles that may be assigned to employees because of their professional or technical skills. Many workplaces have evolved formal or informal leadership positions, in which the incumbents supervise the work of others, provide information on work methods, assess the quality of work of others or check their work, assign work, but who do not have any authority that directly impacts on the economic lives of fellow employees.

Position whose primary duties include activities that are of a confidential nature in relation to any of the following and that have a direct impact on the bargaining unit the person would be included in as an employee but for this paragraph:

- (I) labour relations;
- (II) business strategic planning;
- (III) policy advice; and
- (IV) budget implementation or planning.

It must be demonstrated that positions have significant participation in the planning and formulation of employer policy affecting the running of the organization, the direction of the workplace and/or independent decision-making authority in matters affecting the economic lives of employees. Exclusions based on confidential capacity need to substantiate regular involvement in, not simply access to, confidential matters that impact labour relations. It is the extent to which the information is being used that may place a position in conflict with the bargaining unit.

For instance, budget analyst or budget manager positions typically have a very high level of access to corporate information, including confidential and sensitive information. However, this access alone is not sufficient to attract the confidential exclusion. The conflict arises when the position uses that confidential information and participates in the decision-making process that impacts the labour relations of the workplace.

A policy analyst may recommend the adoption of a different process for performing work. Ultimately, that process, if implemented, may result in a reduction of work with obvious labour relations impact in the organization. It needs to be demonstrated the position has regular involvement and participation in the actual decision to change the work process that impact the economic lives of bargaining unit members.

With respect to strategic planning positions or positions that have a strategic planning aspect to it, the duties need to be more involved than attending meetings where strategic planning initiatives for the ministry are discussed. Positions need to regularly and genuinely participate in information gathering and decision-making discussions that have the potential to impact the economic lives of bargaining unit members.

Finally, positions whose duties include activities related to labour relations that have access to confidential information and participate in or contribute significantly to decisions that have the potential to impact the economic lives of bargaining unit members would be excluded.

Should the request go to a third party, the employer will need to demonstrate that the functions performed by this position create a conflict between the interest of the employer and the interest of their bargaining unit of a kind which would justify removing the position from the bargaining unit.

Scope Determination Form

Employee's Name	Current Classification	MIDAS Position No.
Working Title		Phone No.
Ministry	Branch	Location
Supervisor's Name	Title	Phone No.

Summarize the major responsibilities of the position which create a conflict between the employer and the interests of the bargaining unit.

Positions that are Managerial in Nature

Is this a new position? Yes No

If this is an existing position what changes have occurred to prompt a request for exclusion from the bargaining unit?

Does this position have assigned authority to perform the following managerial duties?

- | | | |
|---|-----|----|
| 1. Regularly provide direct input into branch budget and program planning. | Yes | No |
| 2. Select qualified candidates, negotiate employment offers, and sign letters of offer? | Yes | No |
| 3. Assign or remove duties that result in an employee’s promotion or demotion? | Yes | No |
| 4. Authorize job descriptions (i.e. approve Electronic Position Descriptions)? | Yes | No |
| 5. Respond to grievances at Step 1 or 2? | Yes | No |
| 6. Impose corrective discipline and performance improvement plans? | Yes | No |
| 7. Final authority on whether an employee passes or fails probation? If no, why not? | Yes | No |

8. Number of employees managed: _____

Positions of a Confidential Nature

Positions whose primary duties include activities that are of a confidential nature related to labour relations, business strategic planning, policy advice or budget implementation or planning and have access to information that will have direct impact on the unionized workforce and/or bargaining relationship. This information must remain confidential until it is best determined strategically how and when the information should be provided to the union.

The examples/descriptions should clearly reflect this.

Is the position required to analyse and utilize and has knowledge of confidential matters relating to labour relations, business strategic planning, policy advice or budget implementation or planning that have direct impact on the terms and conditions of employment for bargaining unit employees?

Yes No

If yes, provide examples and explain where the conflict exists and how the responsibilities affect the terms and conditions of employment of employees.

I CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE AND THAT I HAVE BEEN GIVEN A COPY OF THIS FORM.

Signature of Employee

Print Name

Date

**I CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE AND HAVE ATTACHED AN ORGANIZATIONAL CHART -
Chart Should Have Effective Date**

Immediate Manager or
Supervisor

Print Name

Date

Human Resource Business
Partner

Print Name

Date

Reset Form