



MEMORANDUM

TO: Administration & Finance Executive Committee

FROM: A. Petrin, Human Resources Manager

DATE: May 13, 2015

SUBJECT: WSIB Coverage for Elected Officials

In preparation for our meeting of May 19, please review the enclosed information regarding WSIB coverage for elected officials. Enclosures specific to this topic include:

- **Who is a Worker?**
 - WSIB Reconciliation Guide
 - pp. 7-8, 11-12
- **Optional Insurance**
 - Operational Policy 12-03-02
 - pp.1-11
- **Who Can Obtain Optional Insurance?**
 - Operational Policy 12-03-03
 - pp.1-4
- **Third Party Rights of Action**
 - Operational Policy 15-01-05
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- **Determining Average Earnings – Concurrent Employment**
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 - Operational Policy 12-01-04
 - pp. 1-4

Please note that the Corporation of the Town of Fort Frances is considered a Schedule 1 Employer by the WSIB due to the WSIB's classification of our business activities.

As such, the Corporation of the Town of Fort Frances is protected by a system of collective liability and are relieved of individual responsibility for actual accident costs.

Therefore, premiums are based on the WSIB's classification of each individual business activity, and the total insurable payroll value.

This memorandum is for informational purposes, and no action is required.
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Who is a worker?

The WSIB requires employers to report the earnings of all their workers.

Defining a worker

A worker is anyone you employ in your business under a contract of service or apprenticeship. In this relationship you, for example, set:

- ▶ The nature and place of work
- ▶ When it is performed, and
- ▶ How it is performed

In some cases an unpaid employee may still be considered a worker (e.g. training participant).

Workers can be employed either full-time or part-time, including:

- ▶ Seasonal, temporary or occasional employees*
- ▶ Students, apprentices and learners
- ▶ Training participants
- ▶ Domestic workers working for you for more than 24 hours a week

*Occasional/Casual Worker

An occasional (or casual) worker is an individual who works occasionally i.e. less than part-time, and works on an irregular schedule. If such a worker is employed for the purposes of the employer's industry, insurable earnings must be reported and premiums must be paid for the work performed. However, if such a worker is employed otherwise than for the purposes of the employer's industry, there is no need to report insurable earnings or remit premiums for the work performed.

For example, if an employer who operates a restaurant hires an additional cook during busy periods in the year, the insurable earnings of this worker must be reported and premiums paid for the work performed.

If the same employer hires a different worker to only clear snow around the building, on a less than part-time basis during the year, the employer is not required to report the earnings of this worker to the WSIB.

Relatives

A family member, including spouse, children and other relatives, employed under a contract of service and receiving earnings is considered a worker. Their earnings must be included in the premium calculation.

Executive officers

The WSIB considers executive officers to be a select group of individuals who control the direction of the entire organization rather than just a department or branch. Title alone does not make an individual an executive officer. The key to executive officer status is that the person is empowered or appointed to act as an officer of the organization. If the individual is not empowered by the organization as an officer, the WSIB will not determine them to be an executive officer. The WSIB has the authority to determine who is an executive officer.

In order to determine if one (or more) of the individuals on your payroll is an executive officer, the WSIB will consider a number of factors, including whether the individual in question:

- ▶ Holds a position (as corporate officer or director) and is named in your corporation's minute book as holding this position
- ▶ Is enumerated, appointed or empowered through corporate documents such as Articles of Incorporation, Charters, by-laws, and/or Corporation Profile Reports filed with a federal or provincial agency to act as an officer
- ▶ Does in fact perform the duties and executes the responsibilities of an executive officer, as defined by the WSIB, and
- ▶ Has significant functional responsibilities demonstrating the individual is a 'directing mind' and/or is wholly or partially responsible for the organization as a whole

Executive officers are not automatically covered under the *Workplace Safety and*



For information on training participants and domestic workers check Operational Policy Manual document 12-04-05, Coverage for Unpaid Trainees, and 12-04-14, Domestic Workers, on our website at www.wsib.on.ca

Who is a worker?



For more information on completing worker/independent operator determination questionnaires see our website.



Request a Clearance if you retain a contractor/subcontractor.

For more information about Mandatory Coverage in Construction or on Clearances, including obtaining a Clearance using online eClearance, visit the WSIB's website.

Insurance Act, 1997 (WSIA) unless they are engaged in non-exempt construction work or apply for optional insurance.

An individual in construction who has an exemption under Operational Policy Manual document 12-01-06, Expanded Compulsory Coverage in Construction, may apply for optional insurance.

The WSIB has the authority to determine who is an Executive Officer. For a complete description of who qualifies as an Executive Officer for WSIB purposes go to: www.wsib.on.ca, Operational Policy Manual document 12-03-03, Who Can Obtain Optional Insurance?

Contractors/Subcontractors who are not in the construction industry

For WSIB purposes, a contractor/subcontractor or owner operator, may be considered;

- ▶ A worker
- ▶ An independent operator and/or
- ▶ An employer

If you're a contractor/subcontractor, and the WSIB confirms that you're considered to be a **worker**, you are automatically covered.

If you are a contractor/subcontractor, and the WSIB confirms that you are considered to be an **independent operator**, then you are not required to have insurance coverage with the WSIB (unless you are in the construction industry).

If you're a contractor/subcontractor who employs workers/helpers, then you are considered an **employer** and must be registered with the WSIB.

If you retain a contractor/subcontractor to perform a service and there is evidence that the contractor/subcontractor hires help, you should verify that the contractor/subcontractor working for you is registered with the WSIB and remains in good standing.

For the period being reconciled, you may have retained contractors who you

considered as independent operators or employers in their own right. As a result, you may not have reported payments made to them as insurable earnings on your Premium Remittance forms. If you did not obtain rulings from the WSIB confirming independent operator status for these individuals, or did not obtain a clearance for those contractors/subcontractors who employ help or have optional insurance, the WSIB strongly encourages you to do so. If the WSIB finds that these contractors/subcontractors were in fact your workers, unregistered employers, or registered employers not in good standing, you could be liable for premiums that are owed in connection with the work or service they performed on your behalf.

Construction: Deemed Workers

In the construction industry, independent operators, sole proprietors, partners in a partnership, and executive officers of a corporation are deemed workers for whom insurable earnings must be reported; except if they are exclusively performing exempt home renovation work or a partner or executive officer who has been granted an exemption from compulsory coverage by the WSIB.

Contractors who are workers of the Principal in Construction

When a principal hires an individual contractor to provide construction work, and this individual is not an independent operator in construction, the principal is the employer of this individual for all WSIB purposes.

The WSIB has the authority to determine who is a worker or an independent operator under the WSIA and reserves the right to review this ruling at any time. For more information visit www.wsib.on.ca, Operational Policy Manual document 12-02-01, Workers and Independent Operators, or contact the WSIB account representative.

Earnings Records

Earnings records confirm the total gross earnings of your workers for the calendar year. Records should include:

- ▶ Names of your workers and positions
- ▶ Earnings, hours and days they were paid, and
- ▶ Dates on which they were employed

Record keeping when hiring contractors/subcontractors

Keep business records, including written contracts and contractors'/subcontractors' invoices that show

- ▶ Dates worked, days and hours paid
- ▶ Amounts earned
- ▶ Amounts paid for labour and costs of material/equipment supplied by the contractor/subcontractor

Excess Earnings

Excess earnings for an individual worker are any earnings above the annual maximum insurable earnings set by the WSIB. Employers pay premiums on gross insurable earnings up to the maximum insurable earnings set for the year. Any earnings above this limit are not subject to WSIB premiums.

For 2014 the maximum insurable earnings ceiling is \$84,100.

For the 2014 year end reconciliation, use the 2014 annual maximum insurable earnings ceiling.

The maximum insurable earnings ceiling for 2015 is \$85,200.

When closing an account in 2015, use the 2015 annual maximum insurable earnings.

Example:

▶ Worker 1: 2014 gross earnings = \$87,600

▶ Worker 2: 2014 gross earnings = \$61,300

WSIB 2014 maximum insurable earnings = \$84,100

The employer will pay premiums on:

▶ **Worker 1:** \$84,100

Worker's gross earnings are above the WSIB 2014 maximum insurable earnings, therefore employer pays on WSIB maximum insurable earnings

▶ **Worker 2:** \$61,300

Worker's gross earnings are below the WSIB 2014 annual maximum insurable earnings, therefore employer pays on worker's total gross earnings

If a person works for more than one employer during the year, the annual maximum insurable earnings applies to the insurable gross earnings with each employer. Employers are not responsible for tracking a worker's earnings with other employers.

Optional Insurance

Excluding the construction industry, independent operators, sole proprietors, partners and executive officers are not automatically covered under the WSIA unless they apply for optional insurance.

An owner's spouse, or other family member must hold a position as a partner or executive officer and must receive earnings that are verifiable if audited to qualify for optional insurance.

Under the WSIA, compulsory coverage extends to most independent operators, sole proprietors, partners and executive officers in the construction industry, with certain exceptions. A partner/executive officer who has been granted an exemption by the WSIB or an individual who meets the

home renovation exemption criteria under Operational Policy Manual document 12-01-06, Expanded Compulsory Coverage in Construction, may make an application for optional insurance.

Optional insurance takes effect the date the signed written request is received by the WSIB.

The optional insurance amount should reflect the earnings of the person covered.

Optional insurance is always set at an annual earnings level, subject to the annual maximum insurable earnings ceiling, regardless of the period the insurance is actually in effect.

The minimum coverage period for optional insurance is three months.

To update the amount of optional insurance, use the Optional Insurance Request/Change form included in your reconciliation package.

For more information go to www.wsib.on.ca, Operational Policy Manual document 12-03-02, Optional Insurance, and Operational Policy Manual document 12-03-03, Who Can Obtain Optional Insurance?

Cancelling optional insurance

If there is optional insurance coverage on your WSIB account, optional insurance stays in effect until the person covered provides a signed, written request asking for cancellation of optional coverage.

If the person covered is no longer with the firm and is not available to sign the cancellation form, the employer must provide the date the person in question left the company. In such cases the WSIB will accept an authorized signature instead of the insured person's signature.

The WSIB may cancel optional insurance with 15 days notice if the employer defaults on premium payments. If there are multiple

accounts, optional insurance is cancelled for all accounts, no matter which account is in default.

An individual in construction who no longer is eligible for the partner/executive officer exemption from compulsory coverage, or no longer meets the home renovation exemption criteria in construction, must cancel their optional insurance as they must report their actual insurable earnings.

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Optional Insurance

Policy

Independent operators, sole proprietors, partners and executive officers are not automatically covered under the *Workplace Safety and Insurance Act, 1997* (WSIA) unless they apply for optional insurance.

Under the WSIA, compulsory coverage extends to independent operators, sole proprietors, partners and executive officers in the construction industry, with certain exceptions. An individual in construction who meets the exemption criteria under policy 12-01-06, Expanded Compulsory Coverage in Construction, may make application for optional insurance.

An individual applying for optional insurance, or requesting an adjustment to the approved amount of insurance, must provide proof of earnings that is acceptable to the WSIB. Failure to do so may result in the WSIB determining that the applicant does not have optional insurance, or denying the request to adjust the approved amount of optional insurance.

A request for optional insurance must bear the signature of the applicant to indicate consent to insurance coverage. When there is no signature, there is no optional insurance in effect, and the individual is not eligible for loss of earnings (LOE) benefits.

For an individual with optional insurance who is carrying on a Schedule 1 business activity, if the individual's approved amount of insurance is less than the average earnings determined at the time of injury, the WSIB may use the approved amount of insurance as the base for calculating LOE benefits.

If a sole proprietor, partner, or independent operator has operated a business for less than a year and applies for optional insurance, the WSIB sets the approved amount of insurance at one-third of the maximum annual insurable earnings ceiling.

Purpose

The purpose of this policy is to describe the requirements of optional insurance, proof of earnings to set the level of coverage, how to cancel optional insurance, and when the WSIB will initiate the cancellation of optional insurance.

Guidelines

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General

All guidelines up to and including "cancellation by the individual or the employer" apply to business activities in Schedule 1 or Schedule 2. All guidelines following "cancellation by the individual or the employer" in this document apply to business activities in Schedule 1 only.

Definitions**Optional insurance**

Individuals who are not automatically entitled to benefits under the WSIA but who the WSIB deems, upon application, to be workers to whom the insurance plan applies, are said to have optional insurance.

Approved amount of insurance

This amount is based on an individual's average earnings, as determined and approved by the WSIB, taking into account the period of insurance requested. The amount is used to calculate optional insurance premiums for the upcoming year.

Average earnings

An individual's average annual earnings are calculated from the most recent Canada Revenue Agency income tax return or audited financial statement, and are subject to the maximum annual insurable earnings ceiling, see 18-01-02, Benefit Dollar Amounts. Average earnings are used to calculate loss of earnings benefits.

NOTE

Unless the individual is an independent operator, sole proprietor or partner operating for less than a year, the approved amount of insurance for one year cannot be less than the individual's average annual earnings.

Earnings

The term earnings, when used on its own or when included in the phrase proof of earnings, refers to an individual's employment earnings.

Executive officers

In addition to executive officers of corporations, certain individuals whose employers are not corporations are also considered executive officers, see 12-03-03, Who Can Obtain Optional Insurance?.

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For the purpose of this policy, independent operators, sole proprietors and partners who have incorporated are not considered executive officers of a corporation as stated in s.11(2) of the WSIA.

Right of action

Individuals with optional insurance lose certain rights of action, see 15-01-05, Third Party Rights of Action. Those considering optional insurance may choose to seek legal advice on whether insurance will benefit them.

Benefits

In most cases, individuals with optional insurance are entitled to all benefits that would be due to an injured worker, including LOE benefits, health care, etc.

Exception cases

Eligible individuals who fall into one of the following exception categories must notify the WSIB of their employment status when applying for optional insurance. The WSIB then determines the amount of their optional insurance and, for individuals engaged in a Schedule 1 business activity, how their premiums will be reported and paid.

Exception categories include

- individuals whose earnings are divided among two or more accounts linked to one employer
- executive officers working for two or more employers
- executive officers who also have independent operator, sole proprietor, or partner status in another business
- individuals eligible for optional insurance who are also part-time workers (not as executive officers) under the WSIA in another business.

Change of job status

When the job status of individuals with optional insurance changes, optional insurance continues as requested if the individual still holds an eligible position. For example, if a sole proprietor becomes a partner, or an executive officer, such as a director, becomes a chairperson, eligibility for optional insurance is not affected, see 12-03-03, Who Can Obtain Optional Insurance?.

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Optional Insurance**How to apply****Schedule 1****NOTE**

The WSIB does not accept telephone requests for optional insurance.

Individuals apply for optional insurance by completing the Optional Insurance Request/Change form or by sending the WSIB a letter providing

- the individual's name, address, and telephone number
- the individual's status, i.e., independent operator, sole proprietor, partner, or, for executive officers, specific job title, e.g., general manager, director
- the date the business was started, if it is already operating
- the insurance period requested--three months to one year (see "Period of insurance," below)
- proof of earnings (see "Premiums for Schedule 1 employers," below) if the individual is
 - an executive officer, or
 - an independent operator, sole proprietor, or partner in operation for one year or more
- the effective date requested
- the individual's signature and, for executive officers, the title and signature of the employer or an authorized officer.

If an independent operator, or a partner in a partnership not employing workers, is carrying on a business activity not covered under Schedule 1 on a compulsory basis and wants optional insurance, the employer must apply to have the operation added to Schedule 1, see 12-01-02, Employer by Application.

If an account including optional insurance has an overdue balance, the WSIB does not accept requests for new optional insurance, or for an increased amount of optional insurance, until the amount owing is paid in full.

Schedule 2**NOTE**

The following guideline applies to executive officers only.

Sole proprietors, independent operators, and partners who carry on a Schedule 2 business activity and want optional insurance should contact Schedule 2 Account Services.

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Executive officers request optional insurance by completing the Optional Insurance Consent Form Under Schedule 2. The form must be signed and dated by both the applicant and the employer or an authorized officer. The completed consent form is retained by the employer. Insurance is effective as of the date of the signed form.

For an executive officer to be considered for benefits, a copy of the consent form must be filed when the injury is reported with a Form 7.

Cancellation by the individual or the employer

Cancellation of optional insurance may be requested by the individual holding the optional insurance. An employer's request to cancel must be in writing, signed and dated.

For individuals engaged in a Schedule 1 business activity, the request to cancel is forwarded to the WSIB. The WSIB then cancels the insurance on the date the cancellation request is received, or on a requested future date. The WSIB issues a notice of cancellation to the individual and, if applicable, to the employer.

For individuals engaged in a Schedule 2 business activity, the request to cancel must be signed and dated by the person cancelling the insurance (the individual holding optional insurance). The request to cancel is retained by the employer, along with the original application. The request takes effect on the most recent date of signing, or a future requested date.

Executive officer leaves employer

If an executive officer stops working for the employer, optional insurance is cancelled effective the last day worked. If the officer was working for more than one employer, the optional insurance continues with the other employer(s).

Individual no longer eligible

If an individual is no longer eligible for optional insurance because of compulsory coverage in construction or a change in employment status, optional insurance is cancelled from the date the individual's status changed. For example, if a partner in a business ceases to be a partner but stays on as an employee, that individual is no longer eligible for optional insurance.

If an individual in the construction industry is no longer eligible for optional insurance because of a material change in circumstance, optional insurance is cancelled the date of

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the material change. See 12-01-06, Expanded Compulsory Coverage in Construction.

Business ceases employing help

If a business including individuals with optional insurance stops employing workers but does not stop operations, optional insurance continues until either the business stops or the insurance is cancelled.

Business ceases

If the business of an independent operator, sole employer, proprietor, or partnership without workers is discontinued, optional insurance is cancelled effective the date operations stop. This closure of a business is a reportable material change in circumstance, see 22-01-01, Material Change in Circumstances - Employer.

Death of individual

If an individual with optional insurance dies, optional insurance is cancelled effective the date of death.

Individual receiving benefits

If an individual engaged in a Schedule 1 business activity who has optional insurance receives LOE benefits as the result of a work-related injury, the WSIB does not automatically cancel the insurance. It is the individual's responsibility to notify the WSIB if cancellation is desired.

Cancellation by the WSIB (Schedule 1 only)

The WSIB cancels optional insurance for all individuals under Schedule 1 whose premiums are reported by an employer if

- the employer has an overdue balance on one or more accounts, or
- the WSIB initiates legal action to recover the amount owing, and
- the individual is carrying on business in the construction industry and is required to have coverage.

Cancellation is effective at midnight of the 15th calendar day following the day on which the WSIB mails a notice by registered mail, addressed to the employer and to the individual with optional insurance. The WSIB uses the address of the employer as listed in the WSIB's records.

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When mail to a Schedule 1 employer is returned by Canada Post, or the WSIB cannot locate the employer's address, the WSIB cancels any existing optional insurance.

Premiums for Schedule 1 employers

The approved amount of insurance for an individual determines the premiums to be paid for optional insurance. The method for calculating average earnings is described in the following guidelines (the WSIB uses the same method for both premium and benefit calculations.)

NOTE

Optional insurance premiums for a given year are based on average earnings calculated for a previous year.

Period of insurance

In most cases, individuals applying for optional insurance request insurance on a continuing basis from the day the insurance comes into effect. However, individuals may request optional insurance for less than a year. The minimum period is three months.

NOTE

The following guidelines assume that the optional insurance has been requested for a full year on a continuing basis, except where noted.

Proof of earnings

Acceptable proof of earnings must be provided as requested by the WSIB. Situations where the WSIB requests proof of earnings include those detailed below. Without acceptable proof of earnings, the WSIB may deny an application for optional insurance, cancel existing optional insurance, or determine the approved amount of insurance at its discretion.

Average earnings for executive officers

The average earnings for an executive officer are the earnings reported on the previous year's Canada Revenue Agency income tax return.

In operation less than a year

If the employer has been in operation less than a year and there is no filing with Canada Revenue Agency available, the average earnings are the executive officer's salary as

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stated by the employer.

Average earnings for sole proprietors, independent operators, partners

If an individual has operated a business for one year or more at the time of application, the WSIB determines the average earnings from

- net business income for the previous year as reported to Canada Revenue Agency, subject to audit by the WSIB. The WSIB overestimates the net business income by including such items as
 - pension plan and RRSP contributions
 - depreciation and amortization
 - charitable donations
 - expenses arising out of the individual's use of personal home or vehicle for business purposes
 - dividends from the business
 - other items as appropriate, or
- an audited financial statement of earnings prepared by a chartered accountant.

In operation less than a year

If an individual has operated a business for less than a year at the time of application and requests optional insurance, the WSIB sets the approved amount of insurance at one-third of the maximum annual insurable earnings ceiling. The individual pays premiums based on this amount (see "Payment in advance", below).

Updating the approved amount of insurance

When an individual reports annual income to Canada Revenue Agency (or produces an audited financial statement) and believes that the average earnings for the purpose of optional insurance have changed, the individual must immediately notify the WSIB in the same manner as a new applicant (see "How to apply" above) in order to update the approved amount of insurance.

Individuals whose approved amount of insurance has been set at one-third of the earnings ceiling must also update this amount in the same way after one year of operation.

The WSIB does not require an individual with optional insurance to update the approved amount of insurance more frequently than once a year.

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Optional Insurance**Effective date**

Optional insurance comes into effect on the date acceptable proof of earnings is received in writing by the WSIB.

Payment in advance

The WSIB may require payment in advance in three situations.

Newly registered independent operator, sole proprietor, or partner has been in operation less than one year.

In this case, the WSIB requires the equivalent of six months' optional insurance premiums in advance, with any remainder of the annual optional insurance premiums to be paid by the next scheduled due date.

Independent operator, sole proprietor, or partner has been in operation for one year or more and requests a clearance certificate upon registration.

In this case, the WSIB requires the equivalent of three months' premiums in advance.

Individual whose optional insurance has been cancelled by the WSIB requests reinstatement.

At the discretion of the WSIB, such an individual may request to have optional insurance reinstated in the same calendar year in which the cancellation occurred. In these cases, the WSIB may request advanced payment, or may require any other conditions deemed necessary.

Benefits paid on lower amount

If an individual with optional insurance is entitled to loss of earnings benefits as the result of a work-related injury and

- the individual did not notify the WSIB after the most recent Canada Revenue Agency income tax filing or audited financial statement, and
- the average earnings calculated using the most recent Canada Revenue Agency filing or financial statement do not match the approved amount of insurance on the account,

then the WSIB uses the most recent average earnings calculation, or the approved amount of insurance, whichever is lower, as the base for determining LOE benefits.

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If the average earnings based on the most recent filing or statement are lower than the approved amount of insurance, the WSIB does not refund the difference between the premiums already paid and the premiums that would have been paid based on the lower earnings figure.

Zero average earnings

If based on the most recent Canada Revenue Agency income tax return or financial statement, a claimant's average earnings are zero or less than zero (i.e., a net loss for the year), the WSIB does not pay loss of earnings benefits. However, it provides health care and other benefits.

Deduction from benefits

If a sole proprietor, partner, or independent operator is entitled to benefits because of a work-related injury, but that person's premiums have not been paid in full, the WSIB deducts the premium amount owing from any LOE benefits payable to that individual.

Application date

This policy applies to all decisions made on or after January 1, 2013.

Document history

This document replaces 12-03-02, dated October 12, 2004.

This document was previously published as:

12-03-02 dated April 29, 2002

12-03-02 dated December 13, 1999.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended

Sections 12(1-7), 12.2, 53(1)

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Policy

The WSIB reserves the right to determine whether an individual is a worker, an employer, an independent operator, or an executive officer.

A person who is an independent operator, sole proprietor, partner or executive officer in the construction industry, may be eligible to obtain optional insurance if the person meets the criteria for exemption. See, 12-01-06, Expanded Compulsory Coverage in Construction.

Purpose

The purpose of this policy is to outline the individuals who are not automatically covered as workers under the *Workplace Safety and Insurance Act, 1997* (WSIA). These individuals may apply for optional insurance.

Guidelines

Definition

Individuals who are not automatically entitled to benefits under the Act, but who the WSIB deems upon application to be workers to whom the insurance plan applies, are said to have optional insurance.

General

Individuals requesting optional insurance must indicate their consent by completing and signing the Optional Insurance Request/Change form. For information on how to apply for optional insurance, or to change the amount of optional insurance for those who currently have it, see 12-03-02, Optional Insurance.

Right of action

Individuals with optional insurance lose certain rights of action, see 15-01-05, Third Party Rights of Action. Those considering optional insurance may wish to consult a lawyer to evaluate whether optional insurance will benefit them.

Independent operators

Except in the construction industry, if an individual applies for optional insurance and his or her status as either a worker or an independent operator is unclear, the WSIB uses the

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organizational test to determine the applicant's status, see 12-02-01, Workers and Independent Operators.

In the construction industry, "independent operator" status will be determined by applying the definition as stated in policy 12-01-06, Expanded compulsory Coverage in Construction

Executive officers

The WSIB determines who is an executive officer according to employer type. The following chart lists the positions that qualify as executive officer positions under this policy.

Employer Types and Executive Officer

EMPLOYER TYPE	DESCRIPTION	EXECUTIVE OFFICERS
Limited liability companies	legally incorporated with share capital	<ul style="list-style-type: none">- members of the board of directors- chair and vice-chair of the board of directors- corporate president, chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), vice-president, general manager of the corporation, corporate secretary and treasurer
Non-Profit	non-incorporated, or legally incorporated without share capital	<ul style="list-style-type: none">- directors of the governing board or the equivalent thereof
Municipalities	incorporated and non-incorporated, including cities, towns, villages and native bands	<ul style="list-style-type: none">- all elected officials (e.g. mayors, city councillors) and temporary appointees to elected positions

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Boards or commissions	public health service facilities (e.g. hospitals), utilities, municipal agencies, school boards, colleges and universities	- members of the governing board, either appointed or elected or the equivalent thereof
Provincial government		- deputy ministers

For the purpose of this policy, an individual such as a sole proprietor, a partner, or an independent operator who incorporates, is not considered an executive officer under section 11(2) of the WSIA.

Proof of executive officer status

The appointment of an executive officer must be verifiable through appropriate and current documentation such that

- The name of the executive officer must be recorded in the employer's minute book and
- The status of executive officer can be verified in other documents that the WSIB may review including resolutions by the board of directors, corporate by-laws, or public records filed with other government authorities.

Notwithstanding the above, the WSIB reserves the right to determine who is an executive officer by examining factors related to the individual's role and responsibilities. Specifically, the WSIB will review the substance of the relationship between the individual and organization to consider relevant factors, for instance, if the individual

- has been delegated the authority to act independently on behalf of the organization
- is responsible for the overall direction and control of the company's operations or financial affairs
- exercises a broad scope of authority to make decisions or formulate policies for the organization as a whole, rather than authority that is strictly limited to a specific branch or division
- has the ability to bind the organization.

Spouse and family members

For a spouse or family member to be eligible for optional insurance, he or she must be

- a partner or an executive officer, and
- active in the business, and in receipt of earnings.

Part-time domestic workers

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The WSIB considers domestic workers to be independent operators eligible for optional insurance if they work

- 24 hours a week or less for a single employer, or
- more than 24 hours a week in total for more than one employer, but not more than 24 hours a week for any single employer.

For more information, see 12-04-14, Domestic Workers.

Homeowners employing domestics may not obtain optional insurance for themselves or the operations pertaining to their household.

Average earnings

For information on determining average earnings, see 12-03-02, Optional Insurance.

Application date

This policy applies to all decisions made on or after January 1, 2013.

Document history

This document replaces 12-03-03 dated October 12, 2004.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended

Sections 2(1), 11(2), 12, 12.2, 26, 28

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Third Party Rights of Action

Law

The *Workplace Safety and Insurance Act* (the Act) provides:

s.26(2)

Entitlement to benefits under the insurance plan is in lieu of all rights of action (statutory or otherwise) that a worker, a worker's survivor or a worker's spouse, child or dependant has or may have against the worker's employer or an executive officer of the employer for or by reason of an accident happening to the worker or an occupational disease contracted by the worker while in the employment of the employer.

s.28(1)

In respect of the worker's injury or disease, a worker employed by a Schedule 1 employer, the worker's survivors and a Schedule 1 employer are not entitled to commence an action against

1. Any Schedule 1 employer.
2. A director, executive officer or worker employed by any Schedule 1 employer.

s.28(2)

In respect of the worker's injury or disease, a worker employed by a Schedule 2 employer and the worker's survivors are not entitled to commence an action against

1. The worker's Schedule 2 employer.
2. A director, executive officer or worker employed by the worker's Schedule 2 employer.

s.28(3)

If the workers of one or more employers were involved in the circumstances in which the worker sustained the injury, s.28(1) applies only if the workers were acting in the course of their employment.

s.30(1)

This section applies when a worker or a survivor of a deceased worker is entitled to benefits under the insurance plan with respect to an injury or disease and is also entitled to

Operational
PolicySection
Average EarningsSubject
Determining Average Earnings - Concurrent Employment

Policy

Where a worker is concurrently employed at the time of injury, the average earnings are the earnings from all employment at the time of injury.

To be considered "concurrently employed," the following conditions must exist

- the accident employer must have WSIB coverage (either compulsory, or by application including self-employment with optional insurance)
- the worker must have more than one contract of employment (contract for service or contract of service) at the time of injury
- there must be evidence of more than one continuing contract of employment during the four week period prior to the injury or some lesser period, and
- the worker must have received earnings from all concurrent employment in any of the four weeks prior to the injury.

Where these conditions are not met, the average earnings should be calculated in accordance with 18-02-02, Determining Short-term Average Earnings and either 18-02-03, Determining Long-term Average Earnings: Workers in Permanent Employment or 18-02-04, Determining Long-term Average Earnings: Workers in Non-permanent Employment.

Purpose

The purpose of this policy is to describe the method to determine average earnings of a worker who is concurrently employed.

Guidelines

Earnings included

If a worker is injured with a **covered** accident employer, the decision-maker includes earnings from all employment regardless of whether the concurrent employers are covered under the *Workplace Safety and Insurance Act, 1997 (WSIA)*. Earnings from self-employment are included if the worker had purchased optional insurance from the WSIB prior to the date of accident and the optional insurance remained in effect on the date of accident.

If, in the four weeks before the injury a worker did not receive earnings from the non-accident job(s) due to illness or vacation, the period is not extended. In these cases the worker is not considered concurrently employed.

**Operational
Policy**Section
Employer CoverageSubject
Schedules 1 & 2

Law

Workplace Safety and Insurance Act

s.88(2)

A Schedule 1 employer is not individually liable to pay benefits directly to workers or their survivors under the insurance plan.

s.90(1)

Every Schedule 2 employer is individually liable to pay benefits under the insurance plan respecting workers employed by the employer on the date of the accident.

Guidelines - Schedule 1

Workplace insurance coverage is compulsory for any business or industry named in Schedule 1, Regulation 175/98. Employers included in Schedule 1 must contribute to the insurance fund.

Insurance fund

The insurance fund is made up of annual premiums paid by Schedule 1 employers. The amount of premium is based on the WSIB's classification of the employer's business activity and the employer's total insurable payroll.

Collective liability

Through contribution to the insurance fund, a Schedule 1 employer is protected by a system of collective liability. Since the WSIB pays benefits to injured workers out of money pooled in the insurance fund, Schedule 1 employers are relieved of individual responsibility for actual accident costs.

Industry classification

Regulation 175/98 divides Schedule 1 employers into 9 different industry classes. For a complete listing of industries covered in Schedule 1, refer to Regulation 175/98.

Mixed operation

**Operational
Policy**Section
Employer CoverageSubject
Schedules 1 & 2

The payroll of workers who are engaged in an operation which is carried on partly as an industry under Schedule 1 and partly as an industry not under Schedule 1 is classified as if the entire operation were in Schedule 1.

Adding industries to Schedule 1

The WSIB may recommend to the Lieutenant Governor in Council that any industry not in Schedule 1 be added to Schedule 1.

Guidelines - Schedule 2**Individual liability**

Schedule 2 employers are compulsorily covered through a system of individual liability. These employers must individually pay the total costs of benefits for their injured employees.

Administration

To cover the cost of these benefits, the WSIB may request a deposit from the Schedule 2 employer.

The WSIB charges each Schedule 2 employer for the cost of administering their claims. Each year an administration rate is calculated and applied as a percentage added to the employers' benefit costs.

Industries in Schedule 2

Schedule 2 of Regulation 175/98 includes the following industries

- railways
- telephone companies within the legislative authority of the Parliament of Canada
- telegraph companies
- navigation companies
- international bridges
- the provincial government, including boards, commissions, and Crown agencies
- any airline with a regularly scheduled international passenger service
- municipalities, including municipal boards and commissions, except hospital boards
- public library boards

**Operational
Policy**Section
Employer CoverageSubject
Schedules 1 & 2

-
- police villages
 - school boards.

Federal government

Federal government workers are covered under the *Government Employees Compensation Act* (a federal statute administered by the provincial workers' compensation boards). These workers are entitled to the same benefits as any worker protected by the *Workplace Safety and Insurance Act* of Ontario. Their claims are administered as if the federal government were a Schedule 2 employer.

The operating departments of the federal government channel all information concerning accidents through the Human Resources and Social Development Canada (HRSDC) - Labour Program to

- determine if the worker is employed by the federal government and if advances are paid
- countersign the "Employer's Report of Injury/Disease, Form 7" (see 15-01-02) authorizing the WSIB to proceed with adjudication of the claim, and
- note whether an election form is required in third party claims (see 15-01-05).

Transfer to Schedule 1

Any Schedule 2 employer may request a transfer to Schedule 1 and receive the protection of collective liability. Guidelines for Schedule 2 employers requesting transfers to Schedule 1 are the same as those for non-covered employers applying for Schedule 1 coverage (see 12-01-02, Employer by Application).

Application date

This policy applies to all decisions made on or after January 1, 1995.

Document history

This document replaces 12-01-04 dated October 12, 2004.

This document was previously published as:

08-01-02 dated December 21, 1994.

**Operational
Policy**

Section
Employer Coverage

Subject
Schedules 1 & 2

References

Legislative authority

Workplace Safety and Insurance Act, 1997, as amended

Sections 67, 68, 74, 88(2), 90(1), 91, 92, 183(2)

O. Reg. 175/98, Schedule 1, Schedule 2, s.12

Workers' Compensation Act, R.S.O., 1990, as amended

Sections 1(3), 5, 6 103, 107, 109(2)

Reg. 1102, R.R.O. 1990

Schedule 1 and Schedule 2

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