

## **WCB Policy 35.10.50, Status of Workers, Independent Contractors and Employers**

### **GUIDELINE 1 - DETERMINING ELIGIBILITY FOR OPTIONAL COVERAGE**

*Please include the Board-Approved policy when referencing guidelines as they are intended to provide clarity and direction to ensure consistent administrative application of the policy.*

#### **INTRODUCTION**

The Workers Compensation Act permits individuals to buy optional coverage in three situations: 1) coverage for firms in non-mandatory industries; 2) coverage for employers and directors; and 3) coverage for independent contractors.

This Guideline is concerned with the third category of optional coverage, which is offered to independent contractors. This type of coverage is commonly referred to as personal coverage.

For information on the other two types of optional coverage, please see Policy 35.10.120, *Terms and Conditions of Optional and Personal Coverage*.

There are two common reasons individuals seek personal coverage:

1. To ensure they have coverage if they are injured working for consumers
2. To get clearance for entering commercial relationships with other businesses

The eligibility requirements and extent of WCB coverage vary depending on whether coverage is sought for (1) relationships with consumers or (2) commercial relationships with other businesses.

An individual's coverage, purchased for work done directly for consumers, will not be the source of coverage if that individual is injured while working for the commercial benefit of another business. In those cases, the individual will likely be determined to be the worker of the principal that engages them.

Policy 35.10.50, *Status of Workers - Independent Contractors and Employers*, sets out the principles that apply when determining a service provider's status for workers compensation purposes.

This guideline outlines key elements of the process for determining when independent contractors and small employers are eligible to purchase optional coverage.

#### **DETERMINING ELIGIBILITY: INDEPENDENT CONTRACTORS & SMALL EMPLOYERS**

Independent contractors are individuals who are self-employed and employ no other person. Small employers are employers whose payroll is less than the minimum annual earnings, as determined in the Act (minimum wage x 40 hours/week x 52 weeks/year). They are treated as if they are independent contractors.

Employers with payroll greater than the minimum annual earnings are considered employers. They must purchase coverage for their workers, and they may purchase coverage for themselves.

When an independent contractor or small employer approaches the WCB to purchase personal coverage the WCB will seek information on the nature of commercial activities being undertaken.

The WCB will seek to determine:

- Whether the person provides a product or service directly to consumers, such as homeowners, who would not be considered employers.
- Whether the person is engaged by other businesses who commercially benefit from the goods or services provided.
- Whether the person's commercial activity involves some combination of the two.

### **1. Coverage for Relationships with Consumers**

*Evidence of revenue earned working for consumers must be provided.*

- The amount of coverage is determined by the individual purchasing it. The minimum coverage that can be purchased is equivalent to minimum annual earnings.
- If the individual purchases coverage above the minimum, proof of earnings is required before the WCB will pay benefits at that level.
- Benefits are paid on the lesser of the amount of coverage purchased and the actual loss of earnings.

### **2. Coverage for Commercial Relationships with other Businesses.**

*An independent contractor or small employer seeking to purchase coverage for the purposes of entering commercial relationships with other businesses must show that they operate an independent business.\**

- The WCB must be able to confirm that the person applying for coverage is not a worker of the principal, but rather an independent business engaged in business relations with its principals, as defined in the policy.
- The *Independent Business Test* is determined in a separate process, detailed in Guideline 2: *Determining that a Service Provider is an Independent Business*.
- Once this determination is made and coverage for that purpose is sold, there are a number of implications:
  - The business is registered with the WCB as an "independent business".
  - Principals are able to confirm that the independent business they wish to contract with is registered with the WCB and premiums are paid (this can be done through the WCB Clearance System and/or by contacting the WCB directly).
  - This confirmation ensures that the principal will not be considered the employer if an injury occurs, and that the source of the coverage will be the coverage purchased by the independent contractor or small employer.
  - If the independent contractor or small employer qualifies as an independent business, but chooses not to purchase personal coverage, they (and their employees) will still be deemed workers of the principal that engages them.

*\*Personal coverage is sold based on the declared business activities and only applies to those declared activities. If the activities change, it is up to the parties to notify the WCB and make the appropriate changes to the coverage.*