

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

GUIDELINE 2 - DETERMINING THAT A SERVICE PROVIDER IS AN INDEPENDENT BUSINESS (The Independent Business Test)

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

A principal who engages service providers for commercial benefit is responsible for ensuring they have WCB coverage is in place.

If the service provider is an independent business with active WCB coverage, the principal is cleared of this responsibility.

The WCB Clearance System allows principals to confirm that service providers qualify as independent businesses and have purchased coverage for themselves and/or their employees. If a principal cannot confirm this through the clearance system, they should contact the WCB directly.

Employers with a payroll greater than the minimum annual earnings are automatically considered independent businesses.

Small employers (with a payroll less than the minimum annual earnings) and independent contractors (self-employed individuals) may be, but are not necessarily, considered independent businesses.

The WCB determines if a service provider qualifies as an independent business when coverage is sought for that purpose. These decisions are made on a case by case basis. No one factor determines the issue and each case is judged on its own merits.

If the service provider does not qualify as an independent business, or declines to purchase optional coverage for that purpose, then the principals who engage them will be considered their employer in the event of a compensable workplace injury.

The WCB considers a number of factors which, taken together, establish that the service provider is significantly and economically independent from the specific principals they engage with. These considerations comprise the Independent Business Test (IBT) and are outlined in detail below.

1. Is the service provider an employer?

- If a service provider employs workers with a payroll over minimum annual earnings they are considered an employer.
- If the WCB establishes the service provider as an independent business, and the service provider purchases coverage for themselves and their workers, the principal will not be responsible for coverage and will not be found to be an employer.

- The principal may still be liable, in whole or part, for the WCB premiums of those workers if the service provider is not registered and in good standing with the WCB.

2. Does the service provider have significant control over the delivery of the work and the payment schedule?

- The more supervision and control exercised by the principal, including such things as dictating hours of work or how a task is to be performed, the less likely that the service provider will be considered an independent business engaged in business to business relations.
- A number of other factors are considered, including the service provider's level of financial investment in their enterprise, the potential variability of their profit margin, and the financial risks involved.
- For example, a service provider whose profit can fluctuate by performing the work efficiently and allowing more time for other contracts, or by expanding their customer base, is more likely to be considered an independent business.

3. Does the service provider primarily operate out of their own business establishment or have significant financial investment in assets (such as equipment) that are used in the delivery of their service?

- If the product or service offered is primarily done within the service provider's own business establishment, it is more likely the service provider is an independent business.
- If the service provider owns a major piece of equipment used in the delivery of a service to the principal, it is more likely the service provider is an independent business.

4. Does the service provider sell their product/service to multiple principals?

- In order to establish themselves as an independent business, service providers should provide detailed information confirming they offer their product or services to multiple customers.
- A small business or independent contractor that is economically dependent on a single customer for its success is generally not an independent business for purposes of the compensation system. The WCB, in determining that the service provider has multiple customers, is also ensuring that the individual is not a worker of the principal.

5. Is it clear that the service provider operates independently of its principals and is not simply working for multiple employers?

- This considers the level of independence exercised by the service provider. Multiple principals indicate an independent business, but could also simply be multiple employers of a worker.
- The nature of the working relationship is examined closely to ensure that the service provider is not a worker and that the business they operate exists independently of the principal(s) they contract with.

If a service provider is determined to be an independent business, they will be obligated to purchase coverage for their workers and will be eligible to purchase optional coverage for themselves as an employer (in the case of someone who is a small employer) or eligible to

purchase optional coverage as an independent business (in the case of an independent contractor).

If the service provider does not purchase this coverage, however, they and their workers will be deemed workers of the principal who contracts with them for commercial benefit.