

Section Title: Finance, Assessments and Administration - *Assessments*
 Subject: Status of Workers, Independent Contractors and Employers
 Effective Date: June 1, 2011

POLICY PURPOSE

In most working relationships, there is a clear worker/employer relationship. However, parties may contract with each other for the provision of services in a variety of ways. In some cases, the service provider is an independent contractor, not a worker. Sometimes it is difficult to determine whether the service provider is a worker or an independent contractor. Different rights and responsibilities apply under *The Workers Compensation Act* (the Act) depending on the nature of the relationship.

This policy explains how the WCB determines a person's status as a worker, employer, or independent contractor for the purposes of the Act. It also describes the circumstances in which the WCB will deem one person to be the worker of another.

APPLICATION

This policy applies to all employers, workers and independent contractors in every industry covered by the Act.

A. POLICY

1. Definitions

Employer: This term is defined in subsection 1(1) of the Act. For the purposes of this policy, the relevant part of the definition is contained in subclause (a)(i) and clause (c): "a person who has in service under a contract for hiring or apprenticeship...a person engaged in work..."; and "a person that the board has determined under subsection 60(2.1) to be an employer".

Homeowner: An individual who owns and occupies a private dwelling.

Independent Contractor: This term is defined in subsection 75(3) of the Act as "a self-employed person...who does not employ any workers".

Person: When used in this policy this term may include an individual, a corporation, a partnership or an unincorporated business, depending upon the context in which it is used.

Principal: In this policy, this term will be used to describe the person for whom work is performed before a determination is made as to whether that person is an employer.

Service provider: This term is used in this policy to describe a person who provides work or services for a principal before a determination has been made as to whether the person is a worker or an independent contractor.

Work crew: A group of individuals, often in the construction industry, that works together to perform a specific job such as roofing, framing, siding, dry walling, etc.

Worker: This term is described in subsection 1(1) of the Act. For the purpose of this policy, the relevant definition is contained in clause (a): “a person...who enters into or works under a contract of service or apprenticeship” and (d): “a person deemed to be a worker under subsection 60(2.1).” Essentially, a worker under clause (a) is an employee.

2. **Authority of the WCB**

- a) The WCB has exclusive authority to make all necessary determinations under the Act, including whether a person is an employer, a worker or an independent contractor. The WCB makes this determination based on the nature of one person’s working relationship with another person.
- b) An individual may perform several roles during the same period of time. For example, a person may be in a typical working relationship with one employer, an independent contractor for a homeowner and an employer of a work crew in another contract situation. The WCB will determine a person’s status depending on the role or roles being performed. The person’s rights and responsibilities under the Act depend upon the role being performed at any given time.
- c) Other agencies, such as Canada Revenue Agency and the Employment Standards Branch of the Manitoba government, also make determinations regarding worker, employer and independent contractor status for the purposes of their legislation. While the WCB will consider those determinations and the basis upon which they are made, determinations by other agencies do not determine a person’s status under the Act.
- d) The WCB also has the authority under the Act to deem someone who is not otherwise a worker under the Act – for the purposes of this policy someone who is an independent contractor – to be the worker of the principal who is then deemed to be the employer. The WCB may use this authority when the person performing the work exhibits some, but not necessarily all, of the characteristics of a worker or when there is a close economic or business relationship between the service provider and the principal.

3. **Determining Status as an Employer, Worker or Independent Contractor**

General

When a person is in a traditional employment relationship (i.e., works set hours for one person and receives T4 income), it is easy to determine that the person is a worker. However, in some cases it is not obvious whether a person is a worker or an independent contractor because of the manner in which the relationship between the service provider and the principal is structured.

The WCB will consider the details of the relationship between the service provider and the principal in order to determine whether the service provider is a worker or an independent contractor. The status of the principal (i.e., whether or not he or she is an employer) will be determined by the status of the service provider.

Specific considerations

In making the determination, the WCB will look at all of the facts. The manner in which the parties characterize the relationship will be considered by the WCB but will not determine the matter. The factors that the WCB will consider in making this determination include:

- Is the service provider paid T4 income or business income? A person receiving T4 income is likely a worker. Business income suggests independent contractor status.
- Does the service provider work under the supervision and control of the principal? In other words, does the principal dictate specific hours of work or how a particular task is to be performed, or is the service provider free to determine those matters on his or her own? The more control that is exercised by the principal, the more likely it is that the service provider is a worker.
- Does the service provider perform work that is an integral part of the business of the principal? The more integral to the business the work performed is, the more likely that a service provider is a worker.
- Does the service provider have significant financial investment in and responsibility over the vehicles, tools and major pieces of equipment that he or she requires to perform the work? Financial investment in, and responsibility over, vehicles, tools and equipment suggests independent contractor status.
- Does the service provider take financial risk or have the possibility of increasing his or her profit by, for example, performing the work in a shorter period of time? Significant risk and the possibility of reward suggest independent contractor status.
- Is the service provider hired for specific jobs or is the working relationship between the service provider and the principal continuous and ongoing? Being hired for a specific job suggests independent contractor status; having a continuous, ongoing relationship is more indicative of a worker.

- Is the working relationship exclusive or does the service provider perform the same or similar work for a number of different people or entities? Provision of service to one person suggests that the service provider is a worker.
- Is the service provider responsible to pay all business expenses and remit his or her own income tax, GST, etc.? Responsibility for business expenses and taxes suggests independent contractor status.

No one factor is determinative of the matter. The relationship as a whole will be considered.

Work Crews

In some industries, such as construction, work crews consisting of several individuals work together to perform services for a number of principals. Sometimes one member of the crew is the head of the crew and may distribute payment to the other members of the crew. It is not always clear whether each member of the crew is an independent contractor or whether the head of the crew is the employer and the other members of the crew are employees. In these situations:

- unless there is evidence to the contrary, the WCB will consider all members of the crew to be independent contractors when the total amount paid to the crew members (other than the head of the crew) does not exceed the minimum annual earnings established by regulation under the Act;
- unless there is evidence to the contrary, the WCB will consider all members of the crew to be employees of the head of the crew (who will be considered to be the employer) when the amount paid by the head of the crew to the members exceeds the minimum annual earnings established by regulation under the Act.

4. Deeming a person to be the worker of the person for whom work is performed

Independent contractors are entitled to purchase WCB coverage under the Act. This coverage is voluntary. If an independent contractor has purchased voluntary coverage, the WCB will not deem him or her to be the worker of a principal.

In some cases, the relationship between the service provider and the principal exhibit some of the characteristics of a worker and some of the characteristics of an independent contractor. In those circumstances, if the service provider does not have voluntary coverage, the WCB will deem the service provider to be the worker of the principal and will deem the principal to be the employer. The following are examples of situations in which the service provider will ordinarily be deemed to be the worker of the principal, who will be deemed to be the employer:

- Work crews will be deemed to be the workers of the principal unless the principal is a homeowner contracting for services on his or her home;
- Owner/operators such as truckers and couriers will generally be deemed to be the worker of the principal if the equipment owned and operated or hauled by the service provider bears the logo of the principal;
- Service providers will be deemed to be the workers of the principal for whom they work exclusively or primarily.

This list is not exhaustive. There may be other situations in which the WCB deems a service provider to be the worker of the principal. Different industries have different methods of structuring relationships between service providers and principals. The guidelines attached to this policy will provide more guidance for specific industries that typically do not enter into traditional employee/employer relationships.

5. Consequences to deemed employers of having deemed workers

Once a service provider is deemed to be a worker, the deemed employer has the same obligations to that worker as to any other worker. This includes paying WCB assessments on the assessable earnings of the deemed worker. Determining assessable earnings in these situations is not as straight forward as determining assessable earnings on T4 income. The guidelines attached to this policy will provide guidance in determining assessable earnings for specific industries.

The WCB has developed a Labour Percentage Schedule for determining the labour portion of a contract when the price includes materials and equipment. Appendix B of the guidelines sets out a standard labour percentage of the total contract or piecework price for various industries. The labour percentage reflects an average for the industry or the type of equipment. If an employer disagrees with a labour percentage used, the WCB will consider documentation provided from the employer to support a different labour cost.

B. REFERENCES

The Workers Compensation Act, subsections 1(1), 60(2.1), 68(1), and section 75
Manitoba Regulation 201/2009, *Minimum Annual Earnings Regulation*

History:

1. Independent Contractors - Criteria approved by Board Order 23/85 on February 6, 1985.
2. Policy 35.10.50 approved by Board Order 44/89 on March 15, 1989, effective February 24, 1989.
3. Definition of "Homeowner" in Policy 35.10.50 amended by Board Order 42/90 on November 29, 1990.
4. Assessment Schedule for Contract Labour amended by Board Order 16/93 on April 30, 1993.
5. Policy revised by Board Order 24/08 on June 26, 2008, effective July 1, 2008. Policy was rewritten in plain language, obsolete terms were removed, and excessive detail and industry-specific procedures were deleted from the policy and incorporated into operational guidelines.
6. Policy revised by Board Order 08/11 on April 28, 2011, effective June 1, 2011. The Labour Percentage Schedule in Appendix B was referenced in the policy. Please contact the WCB at 954-4655 for a copy of the guidelines.
7. Minor formatting and grammatical changes were made to the policy and the effective date was clarified, June 27, 2012.
8. Reference section updated to reflect Manitoba Regulation 201/2009, August 24, 2016.
9. Reference to the WCB Telephone number to call to receive a copy of the policy guidelines was deleted in September 2016 as the policy guidelines are available on the WCB website.