

**Operational
Policy**Section
Employer CoverageSubject
Expanded Compulsory Coverage in Construction

Policy

Under the *Workplace Safety and Insurance Act, 1997* (WSIA), compulsory coverage under the insurance plan extends to independent operators, sole proprietors, partners and executive officers in the construction industry, with certain exceptions. These persons are “deemed workers” under the WSIA.

If these deemed workers are engaged exclusively in home renovation work, as defined in this policy, they are exempt from compulsory coverage.

Partnerships, corporations with workers, and corporations without workers but with multiple executive officers may exempt from coverage one partner or one executive officer if that individual does not perform any construction work.

This policy should be read in conjunction with the following companion policies: 14-02-18; Insurable Earnings - Construction; 14-02-19, Clearance Certificate in Construction; 22-01-10 Offences and Penalties - For Compulsory Coverage in Construction. 22-01-10 Offences and Penalties - For Compulsory Coverage in Construction will only be in effect from January 1, 2013 to December 31, 2013.

Purpose

This policy identifies the compliance requirements of those operating in the construction industry who were previously exempt from compulsory coverage.

Guidelines

Definitions

Construction means any of the industries listed in Class G – Construction of Schedule 1 (O. Reg. 175/98) and/or business activities included in Class ‘G’ in the WSIB’s Employer Classification Manual (ECM).

Independent Operator in construction means, an individual who,

- does not employ any workers,
- reports himself or herself as self-employed for the purposes of an Act or regulation of Ontario, Canada or another province or territory of Canada (e.g., Canada Revenue Agency), **and**
- is retained as a contractor or subcontractor by more than one person during an eighteen (18) month period

**Operational
Policy**Section
Employer CoverageSubject
Expanded Compulsory Coverage in Construction

or,

- an individual who is an executive officer of a corporation that,
- does not employ any workers other than the individual, and
- is retained as a contractor or subcontractor by more than one person during an eighteen (18) month period

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 the 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 wholly or partially 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.

Who are deemed as workers and employers under this policy?

Every independent operator and sole proprietor carrying on business in construction, who is otherwise not exempt under this policy, is a deemed worker under the WSIA. Every partner or executive officer of a partnership or corporation, respectively, that carries on business in construction, is a deemed worker, unless exempt under this policy.

Where no other workers are hired, the sole proprietorship, partnership or corporation, as the case may be, is deemed an employer for the sole proprietor, partner(s) or executive officer(s). In this policy, "deemed employers" may be referred to as employers.

**Operational
Policy**Section
Employer CoverageSubject
Expanded Compulsory Coverage in Construction

Deemed workers and deemed employers in construction are subject to the rights and obligations of workers and employers under the WSIA.

Registration and reporting obligations

Deemed employers are subject to the same provisions regarding reporting obligations as other employers (refer to the Employer Obligations section of the Operational Policy Manual), except where indicated in policy.

See 14-02-02, Registration, for further information on registration requirements that apply to all employers under Schedule 1.

Upon request, the WSIB will allow the insurable earnings of non-exempt partners and non-exempt executive officers who do not engage in any construction work to be reported under a separate rate group in class G. Periodic on-site visits are permitted, provided that the executive officer is not performing construction work on the site.

For the purposes of exempting a partner in a partnership or an executive officer of a corporation from compulsory coverage, construction work refers to any manual work of a skilled or unskilled nature, the operation of equipment or machinery, or the direct on-site supervision of workers.

Reporting Insurable Earnings

See 14-02-18, Insurable Earnings - Construction, for guidelines on how to report the insurable earnings of workers and deemed workers in construction.

Status declaration requirement

At the time of registration, individuals who operate their business on their own, as sole proprietors without workers or as single officer corporations, will be required to submit a status declaration to confirm their status as an independent operator.

Exemptions from coverage**Exemption for home renovation work**

Independent operators, sole proprietors, partners, and executive officers in the construction industry are exempt from compulsory coverage if they are engaged exclusively in home renovation work, as defined in this policy.

NOTE

The exemption applies only to the individual(s). When these individuals hire workers, they are employers under the WSIA and are required to register with the WSIB to cover their workers.

**Operational
Policy**Section
Employer CoverageSubject
Expanded Compulsory Coverage in Construction

What is exempt home renovation work?

Exempt home renovation work means construction work that is performed

- by an independent operator, a sole proprietor, a partner in a partnership, or an executive officer in a corporation **and**,
- on an **existing private residence** that is or will be occupied by the person who **directly retains** the contractor (independent operator, sole proprietorship, partnership, or corporation), or by a **member of the person's family**.

Existing private residence defined

- An existing private residence is a dwelling that includes
- a house, condominium unit, or apartment unit
- a private residence that is used seasonally or for recreational purposes, such as a cottage

and,

- any structures that are normally incidental or subordinate to the private residence, situated on the same site, and used exclusively for non-commercial purposes. These include such structures as garages, sheds, fences, or swimming pools.

To satisfy the conditions of the home renovation exemption, the person directly retaining the contractor, or a member of the person's family, is or will be an occupant of the private residence.

Family member defined

A member of a person's family means:

- (a) the person's spouse,
- (b) the person's child or grandchild,
- (c) the person's parent, grandparent, father-in-law or mother-in-law,
- (d) the person's sibling, or
- (e) anyone whose relationship to the person is a "step" relationship corresponding to one mentioned in clause b), c) or d).

Meaning of the phrase "directly retained"

To qualify for this exemption, a contractor (independent operator, sole proprietorship, partnership, or corporation) must be "directly retained" by the occupant or a family member of the occupant. To be "directly retained", the contractor

- must be hired by the occupant or family member and,

**Operational
Policy**Section
Employer CoverageSubject
Expanded Compulsory Coverage in Construction

- provide estimates/contracts/invoices to the occupant or family member, in the contractor's name and,
- receive payment for the job directly from the occupant or family member.

Subcontractors retained by the home renovation contractor must register

The exemption for home renovation work applies only to the contractor who is directly retained by the occupant or a family member of the occupant. Refer to the definition of "directly retained" above. It does not apply to subcontractors who are retained by the contractor to perform construction work as part of the contract.

Any contractor retaining a subcontractor for home renovation work must obtain a clearance certificate for the subcontractor. See 14-02-19, Clearance Certificate in Construction.

WSIB may verify eligibility for exemption

The WSIB may review written documentation such as contracts, work proposals, invoices, etc., where necessary, to confirm the home renovation exemption. Providing incomplete and/or inaccurate information is an offence and the contractor or subcontractor is subject to a penalty under 22-01-08, Offences and Penalties - Employer and to a retroactive premium adjustment under 14-02-06, Employer Premium Adjustments.

Exempt home renovation contractor must register when hiring workers

If a contractor engaged only in exempt home renovation work hires workers, the contractor must register with the WSIB and report the workers' insurable earnings. However, the individual sole proprietor, partners or executive officers remain exempt from compulsory coverage.

Independent operators, sole proprietors, partners and executive officers subject to compulsory coverage

Independent operators, sole proprietors, partners and executive officers are subject to compulsory coverage when their business is engaged in non-exempt work (any construction work that does not meet the definition of exempt home renovation work). This includes work carried out on the premises of a private residence but which does not qualify as exempt home renovation work such as

- construction work performed on private residences where the contractor is not directly retained by the occupant
- construction work performed on private residences, at the request of individuals who are not occupants, but rather, are in the business of buying, renovating and selling such

**Operational
Policy**Section
Employer CoverageSubject
Expanded Compulsory Coverage in Construction

- properties
- construction work performed on structures situated at the location of a private residence where the structures are used for commercial purposes, e.g. a garage that is used to operate a motor vehicle repair business

The sole proprietorship, partnership, or corporation, without workers, must register as a deemed employer as soon as the non-exempt work commences. If already registered (for example, as an employer with workers), the individuals (sole proprietor, partner, or executive officer) must be covered and their earnings reported in addition to their workers' earnings.

When employers engage in what would normally be regarded as exempt home renovation work, as well as non-exempt work, the insurable earnings reported for the independent operator, sole proprietor, partners or executive officers must include the earnings related to all construction work, including the home renovation work.

In the case of a partnership or a corporation that engages in both non-exempt work and home renovation work, all partners and executive officers must be covered even if one partner or executive officer performs only home renovation work as defined in this policy.

Clearance certificate

A person who directly retains a contractor or subcontractor to perform non-exempt work in construction is required to obtain a WSIB certificate of clearance prior to commencement of the work and for the entire time the contractor or subcontractor is performing the work. See 14-02-19, Clearance Certificate in Construction.

Cancellation of coverage

This section only applies to the cancellation of coverage for the individual independent operator, sole proprietor, executive officer or partner. Accounts remain active if the individual(s) employs workers.

Under compulsory coverage provisions, individuals who alternate between exempt home renovation work and non-exempt work are required to maintain coverage as their business is not exclusive to home renovation work. If circumstances change such that their work consists only of exempt home renovation work, they may contact the WSIB to cancel coverage. However, a minimum period of coverage applies (see next section).

If an individual who is eligible for the home renovation exemption does **not** make a request to cancel coverage, coverage continues to be in effect. The employer is responsible for reporting and paying premiums for insurable earnings on the home renovation work. The WSIB will **not** retroactively apply the coverage exemption.

**Operational
Policy**Section
Employer CoverageSubject
Expanded Compulsory Coverage in Construction**Minimum period of coverage**

Employers who are eligible for the home renovation exemption may request to cancel coverage of the independent operator, sole proprietor, partner(s), or executive officer(s), subject to a minimum three (3) month period of coverage. Beyond the minimum period of coverage, cancellation will take effect on the date the cancellation request is received, or on a requested future date. This rule is waived in the case of a business closure.

Exemption of a partner or executive officer

This section applies to partnerships, corporations with workers, and corporations without workers but with multiple executive officers. This section does not apply to a corporation with one executive officer and no workers.

A partnership or corporation may elect one partner or one executive officer, respectively, for an exemption from coverage if the partner or executive officer does not engage in any construction work. Periodic site visits are permitted, provided that the partner or executive officer is not performing construction work on the site.

For the purpose of exempting a partner in a partnership or an executive officer of a corporation from compulsory coverage, construction work refers to any manual work of a skilled or unskilled nature, the operation of equipment or machinery, or the direct on-site supervision of workers.

The WSIB has the right to determine if the individual

- qualifies as an executive officer or partner, and
- meets the criteria for exemption.

Declaration of exemption requirement

A person authorized by the partnership or corporation may make a declaration for exemption on a form approved by the WSIB. The declaration provides the full name of the partner or executive officer to be exempted along with any other information the WSIB requires. The exemption takes effect the day the declaration is received by the WSIB.

Material change must be reported

Where a corporation or partnership has submitted a signed declaration to exempt one executive officer or one partner from coverage and the exemption criteria no longer apply, the corporation or partnership must notify the WSIB within 10 days after the material change in circumstances occurs. See 22-01-01, Material Change in Circumstances - Employer

**Operational
Policy**

Section
Employer Coverage

Subject
Expanded Compulsory Coverage in Construction

Corporations are also required to contact the WSIB to report a material change if they no longer qualify for the separate rate group assigned to their executive officers.

Application date

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

Policy review schedule

This policy will be reviewed within two years of the application date.

Document history

This is a new policy.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended

Sections 12, 12.1, 12.2, 12.3, 135, 141.1, 141.2, 151.1, 151.2, 182.1, 182.2

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Minute

Administrative
#3, May 8, 2012, Page 494