

Policy

The WSIB has the authority to determine who is a worker or an independent operator under the *Workplace Safety and Insurance Act, 1997* (WSIA).

The WSIB uses questionnaires to gather information to help determine if a person is employed under a "contract of service." The questionnaires reflect the principles of the organizational test for independent operators (see below). Persons employed under a contract of service are workers. Independent operators are not employed under a contract of service.

In the construction industry, independent operators are automatically covered under the WSIA, with certain exceptions. See 12-01-06, Expanded Compulsory Coverage in Construction.

Purpose

The purpose of this policy is to outline the criteria used by the WSIB to determine a person's status as either a worker or independent operator.

Guidelines

General

A "**contract of service**", or employer-employee relationship, is one where a worker agrees to work for an employer (payer), on a full- or part-time basis, in return for wages or a salary. The employer has the right to control what work is performed, and where, when, and how the work is to be performed.

Workers - those who work under contracts of service - are automatically insured and entitled to benefits if injured at work. In addition, their employers must pay premiums to the WSIB.

A "**contract for service**", or a business relationship, is one where a person agrees to perform specific work in return for payment. The employer does not necessarily control the manner in which the work is done, or the times and places the work is performed.

Independent operators - those who work under contracts for service - are not automatically insured or entitled to benefits unless they voluntarily elect to be considered "workers" and apply to the WSIB for their own account and optional insurance, see 12-03-02, Optional Insurance. Independent operators may not be insured through the hiring company's (payer's) WSIB account.

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Workers and Independent Operators**Organizational test**

The organizational test recognizes features of control, ownership of tools/equipment, the chance of profit/risk of loss and whether the person is part of the employer's organization or operating their own separate business.

Questionnaires

The questionnaires apply to persons, usually contractors and subcontractors, who are unsure of their own status, or whose status is in question by the hiring company or the WSIB. Elements of the organizational test are incorporated into the questionnaires that the WSIB uses.

After completing and submitting the appropriate questionnaire to the WSIB, the WSIB determines whether persons are workers in an employer's organization, or independent operators running their own separate business.

Incorporation

The WSIB does not automatically consider incorporation, on its own, as a sole factor in determining whether a person is an independent operator. One-person corporations still need to apply for independent operator status by completing the appropriate industry-specific or general questionnaire. The WSIB looks at whether the person operates a business or not, rather than just the incorporated structure of the operation.

Characteristics of workers and independent operators

The following list compares worker/independent operator characteristics. The statements on the left are more characteristic of the behaviour or situations of workers, while those on the right characterize the behaviour of independent operators. No single statement determines a person's status. Decision-makers consider the information provided on the questionnaires, and any other information relevant to the terms and conditions of employment when making their determinations.

Comparison of characteristics and behaviours of workers and independent operators

Element of relationship	Workers	Independent operators
Instructions	<ul style="list-style-type: none">Comply with instructions on what, when, where, and how work is to be done.	<ul style="list-style-type: none">Work on their own schedule.Does the job their own way.
Training / supervision	<ul style="list-style-type: none">Trained and supervised by an experienced employee of the payer.	<ul style="list-style-type: none">Use their own methods and are not required to follow instructions from the payer.

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	<ul style="list-style-type: none"> Required to take correspondence or other courses. Required to attend meetings and follow specific instructions, which indicate how the payer wants the services performed. 	
Personal service	<ul style="list-style-type: none"> Must render services personally. Must obtain payer's consent to hire others to do the work. 	<ul style="list-style-type: none"> Often hires others to do the work without the payer's consent.
Hours of work	<ul style="list-style-type: none"> The hours and days of work are set by the payer. 	<ul style="list-style-type: none"> Work whatever hours they choose.
Full-time work	<ul style="list-style-type: none"> Must devote full-time to the business of the payer. Restricted from doing work for other payers. 	<ul style="list-style-type: none"> Free to work when and for whom they choose.
Order or sequence of work	<ul style="list-style-type: none"> Performs services in the order or sequence set by the payer. Performs work that is part of a highly coordinated series of tasks where the tasks must be performed in a well-ordered sequence. 	<ul style="list-style-type: none"> Performs services at their own pace. Work on own schedule.
Method of payment	<ul style="list-style-type: none"> Paid by the payer in regular amounts at stated intervals. Payer alone decides the amount and manner of payment. 	<ul style="list-style-type: none"> Paid by the job on a straight commission. Negotiates amount and method of payment with the payer.
Licenses	<ul style="list-style-type: none"> Payer holds licenses required to do the work. 	<ul style="list-style-type: none"> Person holds licenses required to do the work.
Serving the public	<ul style="list-style-type: none"> Does not make services available except on behalf, or as a representative, of the payer. Invoices customers on employer's behalf. 	<ul style="list-style-type: none"> Has own office. Listed in business directories and maintains business telephone. Advertises in newspapers, etc. Invoices customers on own behalf.

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<p>Status with other government agencies</p>	<ul style="list-style-type: none">• Terms of the relationship are governed by a collective agreement.• Canada Revenue Agency either makes no ruling on the person's status, or rules that the person is a worker under the Canada Pension Plan (CPP) and the <i>Employment Insurance Act</i> (EIA). (A ruling is made after the relevant parties complete the form "Request for a ruling as to the status of a worker under the CPP or EIA".)• Collects and pays GST and other applicable taxes on payer's behalf.• Payer deducts EI, CPP, insurance, income tax, etc. from pay.	<ul style="list-style-type: none">• Terms of the relationship not governed by a collective agreement.• Canada Revenue Agency has made an official ruling that the person is not a worker under the CPP and the EIA.• Collects and pays GST and other applicable taxes on own behalf.• Takes no deductions from pay for EI, CPP, insurance, income tax, etc.
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Profit or loss

To determine what the opportunities are for the person to earn a profit or suffer a loss in doing the work, the decision-maker must consider:

- what assets (labour, materials, tools, and equipment) are used, operated, or put into action when doing the work, e.g., a lathe. These are to be distinguished from assets that are the subject of the work, or that are acted upon in doing the work, e.g., the table leg that is "turned" on the lathe.
- what costs are incurred in doing the work, including:
 - costs of the acquisition, maintenance, operation and repair of assets
 - financing and loan arrangements with respect to the work, and
 - licensing and insurance fees
- who pays these costs - the employer or the person
- if the person pays the costs, does the person purchase items directly or indirectly from the employer or through an arrangement with the employer
- what decisions influence the costs and to what extent
- who makes and has the right (legal or otherwise) to make these decisions - the person or the employer, and
- the market mobility of the person or the demand that exists for these services.

Workers have the right to make decisions that, in comparison to those that the employer makes (or has the right to make), have an insignificant or lesser influence on the workers' opportunity to make a profit or suffer a loss in doing the work.

Independent operators have the right to make decisions that, in comparison to those that the hiring company makes (or has the right to make), have a significant influence on their opportunity to make a profit or suffer a loss in doing the work.

Other applicable criteria

To determine what other applicable criteria suggest about the status of the person, decision-makers consider the paired statements that follow. None of these statements, on their own, leads to the determination of status. Before making a determination, decision-makers must consider each statement in reference to all other features of the working relationship.

Other applicable criteria to determine employment status

Element of relationship	Workers	Independent operators
Continuing need for type of service	<ul style="list-style-type: none"> • Payer has a continuing need for the type of service that the person provides. A payer has a continuing need for service if all persons 	<ul style="list-style-type: none"> • Payer does not have a continuing need for the type of service that the person provides.

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	<p>who perform such services, collectively, spend more than 40 hours a month on average doing the work, or if the work continues full-time for more than 4 months.</p>	
Hiring / supervising / paying assistants	<ul style="list-style-type: none"> Hires, supervises, and pays workers, on direction of the payer (acts as a supervisor or representative of the payer). 	<ul style="list-style-type: none"> Hires, supervises and pays workers, on own accord and as the result of a contract under which the person agrees to provide materials and labour and is responsible for the results.
Doing work on purchaser's premises	<ul style="list-style-type: none"> Payer owns or controls the worksite. 	<ul style="list-style-type: none"> Works away from payer's premises using own office space, desk, and telephone.
Oral and written reports	<ul style="list-style-type: none"> Required to submit regular oral or written reports to payer. 	<ul style="list-style-type: none"> Submits no reports.
Right to sever relationship	<ul style="list-style-type: none"> Either the person or the payer can end the work relationship at any time without legal penalty for breach of contract. 	<ul style="list-style-type: none"> Agrees to complete a specific job and is responsible for its satisfactory completion or is legally obligated to pay for damages or loss of income that the payer sustains because of the failure to satisfactorily complete the work.
Working for more than one firm at a time	<ul style="list-style-type: none"> Usually works for one payer. 	<ul style="list-style-type: none"> Works for more than one payer at the same time.

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Workers and Independent Operators**Determining status**

The decision-maker reaches a decision about the status of the person. When the criteria indicate the person has a separate business that is not integrated into the employer's business, then the person is an independent operator. If the decision-maker finds:

- that the person is subject to a high degree of control in doing the work, and
- that the decisions the person makes have an insignificant effect on the person's own opportunity to earn a profit or suffer a loss

the person is a **worker** and does not have a separate business, even if a review of "Other applicable criteria" suggests that some independence is afforded to the person in the relationship with the employer.

Application date

This policy applies to all decisions regarding worker or independent operator status made on or after July 1, 2023.

Document history

This document replaces 12-02-01, dated March 1, 2021.

This document was previously published as:

12-02-01 dated January 2, 2013
12-02-01 dated January 3, 2007
12-01-03 dated October 12, 2004
12-01-03 dated January 31, 2002
01-02-03 dated January 9, 1996.

References**Legislative authority**

Workplace Safety and Insurance Act, 1997, as amended
Sections 2(1), 11, 12, 12.1, 12.2

Minute

Administrative
#1, May 19, 2023, page 613