

DISCUSSION PAPER

1. TITLE

Determining Workplace Status

2. ISSUE

“Determining workplace status”, or “determining an individual’s status”, means deciding, for the purposes of the workers’ compensation system, whether a person is a worker, employer or independent operator. An individual’s status, in turn, defines his or her rights and duties under the *Workers Compensation Act* (“*Act*”).

At issue is how WorkSafeBC – the Workers’ Compensation Board (“WCB”) determines the status of individuals under the *Act*.

A primary concern is that under current policy, some workers may be purchasing their own workers’ compensation coverage as labour contractors or independent operators. This practice has the effect of transferring health and safety obligations, assessment payments and the cost of injuries for experience rating purposes from an "employer" to a "worker".

This issue has implications for all aspects of the workers’ compensation system and poses challenges for the WCB’s prevention, assessment and compensation mandates.

3. BACKGROUND

3.1 Legislation

The main rights and obligations under the *Act* are given to workers and employers, reflecting the “historic compromise” between them¹. These include compulsory compensation coverage for workers, in return for relinquishing the right to sue for work-related injuries and diseases, and the obligation of employers to pay assessments into the accident fund. In addition, Part 3 of the *Act* creates obligations for workers, employers and others to take steps to prevent injuries and diseases. As a result, a person’s status determines the nature and extent of his or her rights and obligations under the *Act*.

¹ The notion of an “historic compromise” between workers and employers is fundamental to the workers’ compensation system. Under the historic compromise, workers give up the right to sue their employers for injuries and diseases that arise out of and in the course of employment. In return, they gain access to a no-fault system of compensation. Employers fund the system and in return receive immunity from lawsuits.

The WCB has exclusive jurisdiction to determine a person's status under the *Act*.² Thus, despite the labels that workplace parties or other government agencies may apply to a work arrangement, the WCB must make its own decision on whether an employment relationship exists for the purposes of the workers' compensation system. It is possible, therefore, for the Canada Revenue Agency ("CRA") or the courts to find that an individual is self-employed for a tax or tort liability, and for the WCB to find that the same individual is a worker.

The *Act* refers to three categories of individuals: workers, employers and independent operators. The terms "worker" and "employer" are defined in the *Act*.³ In contrast, there is no express statutory definition of the term "independent operator", although section 2(2) of the *Act* refers to independent operators who are "neither an employer nor a worker". Thus, "independent operator" is generally understood to mean a self-employed individual with no workers.

Unlike workers and employers, independent operators are outside the mandatory scope of the *Act* and are not obliged to participate in the workers' compensation system. However, they may opt into the system by purchasing personal optional protection ("POP"). The compensation provisions under Part 1 of the *Act* apply to an independent operator who has purchased POP as if he or she were a worker. However, the extent to which the health and safety provisions under Part 3 of the *Act* apply to independent operators is unclear. This point is discussed further in section 4.3 of this paper.

3.2 Policy

WCB policy on status determinations is contained in the *Assessment Manual* ("AM"), which refers to the three categories of individuals recognized under the *Act*: workers, employers and independent operators. In addition, policy refers to two other categories: independent firms and labour contractors.

Policy establishes guidelines for determining who is a worker and an employer in certain specific situations. However, it does not define the term "independent operator" other than to state that "an independent operator performs work under a contract, but has a business existence independent of the person or entity for whom that work is performed". Policy does not provide criteria to identify who is an independent operator, but it does provide factors to determine who is an "independent firm". Both independent operators and employers are considered "independent firms", a term which is not mentioned in the *Act*.

Policy sets out nine general principles to consider in distinguishing an employment relationship from one between independent firms. These include,

² Section 96(1)(j) of the *Act* gives the WCB exclusive jurisdiction to determine whether a person is a worker, subcontractor, contractor or an employer.

³ See section 1 of the *Act*. The term "worker" is further extended in sections 3(5) to 3(7) of the *Act*.

for instance, whether the contract involves essentially services of labour, the degree of control exercised over the person doing the work by the person for whom the work is done, and whether the person doing the work might make a profit or loss.

In addition to the general principles, policy contains specific guidelines that are intended to resolve, in most cases, whether a particular person or entity is an independent firm. Thus, a decision on whether an individual is independent is generally based on the specific guidelines without a full consideration of how the work arrangement measures against the broader general principles. An individual with one of the six characteristics described in the guidelines may be determined an independent firm for registration purposes without the WCB fully considering the relationship or rigorously investigating the circumstances. For instance, policy provides that any firm that has two or more pieces of revenue producing equipment, such as a backhoe and grader, would be considered independent.⁴

The second category of individuals included in policy, but not mentioned in the *Act*, is “labour contractors”. The latter are defined as including proprietors or partners who:

- have workers and supply labour only to one firm at a time;
- are not defined as workers, do not have workers, or do not supply major materials or major revenue-producing equipment but who contract a service to two or more firms on an ongoing simultaneous basis; or
- may or may not have workers but contract a service including one piece of major revenue-producing equipment to a firm or individual.⁵

For instance, a tractor-trailer owner/operator who supplies the tractor-trailer and his or her labour to a construction company would be considered a labour contractor. It should be noted that the term “labour contractor”, as used in WCB policy, does not refer to labour supply firms that provide temporary labour to many employers in various industries.

Labour contractors are essentially a hybrid between a worker and an employer or independent operator. Labour contractors may voluntarily choose to register as employers if they have workers, or obtain POP as independent operators if they have no workers. If they do not register with the WCB as either an independent operator or an employer, they, and anyone they employ, are considered workers of the firm for whom they work.

⁴ See Item AP1-1-3 of the *AM*.

⁵ See Item AP1-1-7 of the *AM*.

As a result, labour contractors receive workers' compensation coverage regardless of whether they purchase POP. If they do purchase POP, they are considered independent operators. If they do not have POP, they are considered workers of the principal contractor.⁶

4. DISCUSSION

4.1 Changes in the BC Labour Market and Increase in POP Accounts

Many businesses in BC have adopted a practice of contracting out work traditionally assigned to workers. Information from Statistics Canada indicates that in 1987, self-employed, unincorporated individuals with no employees accounted for 6.9% of the provincial labour force in all industries. By 2004, this figure had risen to 9.9%, an increase of 43%. In certain sectors, self-employed, unincorporated individuals represent a substantial portion of the industry labour force. In the construction industry, for instance, self-employed individuals represented 20.1% of the labour force in 2004, a 55% increase over 1987.⁷

This growth in self-employment and contracting out has important implications for the workers' compensation system. In many instances, a contractor is required by the principal contractor to have his or her own WCB coverage as a pre-condition to securing work. As a result, there has been an increase in applications for POP coverage over the years. Specifically, the last nine years have seen a general upward trend in the number of POP accounts held by independent operators and labour contractors, from 14,614 in 1996 to 18,809 in 2005.

As a result of pressure to streamline and expedite POP registration, the WCB created the labour contractor policy almost 30 years ago.

4.2 WCB Response to Contracting Out: the Labour Contractor Policy

The WCB responded to the growing practice of contracting out work in Commissioners' *Decision 255*.⁸ This 1977 decision addressed the registration of individuals in certain industries, specifically the forest and construction industries, where it had become customary for companies to let out much of their work to contractors and sub-contractors. The decision noted that companies often stipulated as a pre-condition to awarding a contract that the contractor be registered with the WCB. As a result, the WCB's decision on applications for

⁶ There is an exception to this general principle. A labour contractor with workers who registers as an employer receives coverage for his or her workers only. Such a labour contractor (employer) would not be personally covered under the *Act* unless he or she purchased POP.

⁷ *Employment by Class of Workers, Public and Private Sector, Sex, Industry, Canada, Provincial Annual Average* (Table CD1T07AN), in *Labour Force Historical Review 2001(R)* [CD-ROM] (Ottawa: Statistics Canada, 2001).

⁸ 3 *WCR 155*. *Decision 255* was retired from policy in January 2003.

registration could have a significant impact on a contractor's ability to obtain work.

The Commissioners in *Decision 255* noted that the WCB tended to deny applications for registration from individuals unless accompanied by clear evidence that the person was engaged in an independent business. This resulted in much complaint to the WCB as contractors were unable to obtain work following a denial of their applications for registration.

The Commissioners concluded that a full investigation of each application for registration was no longer appropriate. Instead, it was safe to assume that most applications for registration were made in respect of a properly registrable business and not part of a scheme to avoid the provisions of the *Act*. However, where there was reason to suspect that an attempt was being made to avoid the provisions of the *Act*, the application would be fully investigated.

Following *Decision 255*, the labour contractor policy was created.

Although precise statistics are not available, the Assessment Department estimates that labour contractors comprise 75% to 80% of POP accounts held by individuals without workers. Thus, in 2005, there were an estimated 14,100 to 15,050 labour contractors with POP coverage. This figure does not include individuals who have been told that they are labour contractors and who subsequently decided not to purchase POP, but instead be considered a worker of the principal contractor.

Labour contractors are prevalent in certain industries, such as construction, transportation and consulting, where it is common for employers to require that an individual have WCB coverage as a pre-condition to being hired. The labour contractor policy creates a low threshold for individuals to register relatively quickly with the WCB in order to remain competitive in these industries.

4.3 Challenges under Current Policy

The initial decision on workplace status is generally made by an officer in the Assessment Department when an individual calls to request POP. There is considerable pressure to grant POP on a timely basis, especially in cases where the individual is waiting to start work with a principal contractor but must first have a workers' compensation account. Denial of POP coverage is a frequent source of complaints.

Under current policy and practice, WCB officers generally make minimal inquiries before determining an individual's status. In many cases, policy allows the WCB to determine an individual's status based on only one aspect of the work relationship. For instance, a finding that an individual is a labour contractor and eligible to purchase POP is often based upon the fact that the person has one piece of major revenue-producing equipment, such as a backhoe or courier

bicycle. An individual with two such pieces of equipment and no workers in his or her employ is considered an independent operator.

As a result of policies and practices that do not encourage investigation of individual circumstances, there is a concern that genuine workers may be purchasing POP. This weakens the historic compromise⁹ and its underlying principle of compulsory compensation coverage for workers funded by employers.

In addition, current status policies do not reflect the complexities of the BC economy. They were originally drafted at a time when the WCB's jurisdiction primarily covered construction, natural resources extraction and other "blue collar" industries. This is reflected in policy language referring to the "supply of material" and the provision of "revenue-producing equipment" as criteria for determining independence. However, these concepts are not generally relevant to the large number of "white collar" industries that came under the WCB's jurisdiction when coverage under the *Act* was extended to all BC workers in 1994.

Current policy encourages quick decision-making that is responsive to individual requests for POP. At the same time, status determination is one of the most fundamental decisions made within the workers' compensation system. These determinations have significant consequences in terms of health and safety rights and responsibilities and entitlement to compensation.

4.3.1 Health and Safety Consequences

There is a tension between the WCB's desire to respond promptly and efficiently to individual requests for POP and the need to uphold the prevention mandate through more detailed status investigations to maintain worker protection.

The highest level of health and safety protection under the *Act* is provided to workers. As a result, a finding that an individual is not a worker, but rather an independent operator or a labour contractor, has important health and safety implications. A key consideration in determining these implications is whether the independent operator or labour contractor has purchased POP coverage.

Independent operators without POP have not opted into the workers' compensation system and are generally not covered under the health and safety

⁹ See note #1 for an explanation of the historic compromise.

provisions of the *Act*, except to the extent that certain general provisions create a duty to “persons” at or near the workplace.¹⁰ In contrast, labour contractors without POP are considered workers of the principal contractor and are protected as such under the *Act*.

Independent operators and labour contractors who have purchased POP coverage are treated as workers for the purposes of the *Act*. However, the extent to which they are covered under the health and safety provisions is not entirely clear. Although Part 3 of the *Act* creates general employer duties to all workers at a workplace, many duties of an employer relate specifically to the employer’s own workers. Thus, for instance, an employer has a duty to ensure that its workers are made aware of all known or reasonably foreseeable health and safety hazards to which they are likely to be exposed by their work. It is uncertain whether a principal contractor owes this statutory duty to an independent operator or labour contractor with POP.

In addition, when individuals purchase POP as labour contractors or independent operators, the costs of injuries are not charged to the principal contractor for experience rating purposes. However, in many cases, it is the principal contractor, and not the individual, who controls health and safety at the workplace. As a result, the principal contractor’s experience rating may not reflect the true nature or extent of the business in which he or she is engaged.

4.3.2 Compensation Consequences

Some independent operators and labour contractors purchase the minimum amount of POP to obtain a WCB account number so that they can then secure work. When injured, these individuals often express dissatisfaction that their benefits are based upon the amount of POP coverage, rather than their average earnings, which may be significantly higher. This has resulted in appeals in which the individual maintains that he or she is really a worker.¹¹

As well, independent operators, and labour contractors with POP, do not have employers to accommodate them in an early return to work strategy following a work-related injury. Thus, early return to work options, such as modified duties, are limited for these individuals.

¹⁰ Section 119(a) of the *Act*, for instance, provides that every owner of a workplace must provide and maintain the owner’s land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace. In addition, section 2.1 of the *Occupational Health and Safety Regulation* (“OHSR”) states that the OHSR applies to “all other persons working in or contributing to the production of any industry within the scope of Part 3”. This may create responsibilities or duties for independent operators without POP.

¹¹ See, for instance, Review Division Decision #350, in which an individual, who had purchased POP as an independent operator, subsequently appealed his wage rate after sustaining a work injury, claiming he was really a worker. The Review Officer found that the individual was a worker and that his wage rate had been incorrectly based upon his POP coverage, rather than his average earnings.

5. OTHER JURISDICTIONS

In general, most jurisdictions recognize the concept of independent operator: a self-employed individual who does not employ others. However, they may use different terms, such as “independent contractor” or “self-employed person”, to describe this concept.

Several jurisdictions, such as Ontario, Newfoundland and the Northwest Territories, base their status policies or guidelines on common law employment relationship tests.¹² These policies tend to provide a more extensive list of factors to consider when determining workplace status than those in BC. Nova Scotia does not have policy on independent operators; however, in practice, it applies CRA guidelines to distinguish between workers and self-employed individuals. The CRA guidelines provide a more detailed list of factors to consider than BC policy.

Most Canadian jurisdictions do not recognize a category similar to BC’s labour contractor, where an individual may choose to purchase coverage or be considered a worker of the principal contractor. Only Alberta, Manitoba and the Yukon have a similar concept. Of note, there is a statutory basis for this status category in Alberta and the Yukon.

Overall, all Canadian jurisdictions grapple with status determination issues and the need to provide guidance to decision-makers without creating an inflexible policy that is unable to respond to changing work relationships. Ontario, for instance, has developed guidelines setting out a lengthy list of factors to consider in assessing whether an individual is a worker or an independent operator. To apply these factors to specific industries, the Ontario Workplace Safety and Insurance Board (“WSIB”) has created several industry-specific questionnaires. The WSIB has reported problems with these questionnaires, which are self-scoring and easy to manipulate to produce a desired outcome.

Several jurisdictions have found that the definition of worker for the purposes of assessments and compensation may not be appropriate from a broader prevention perspective of promoting health and safety in the workplace. New Brunswick has responded to this issue by defining the term “employee” in its *Occupational Health and Safety Act* (“NB OHS Act”) more broadly than the term “worker” used in its *Workers’ Compensation Act*. For the purposes of the *OHS Act*, an employee includes an individual who is at a place of employment for a work-related purpose, regardless of whether he or she is paid by the employer.

The definition of “employee” under the Nova Scotia *Occupational Health and Safety Act* (“NS OHS Act”) includes a “dependent contractor”, encompassing

¹² Ontario, for instance, uses an “organizational test” whose components include indicators of control, ownership of tools/equipment, chance of profit/risk of loss and whether the person is part of the employer’s organization or operating his or her own separate business.

individuals who are not in traditional employment relationships, but who are in a position of economic dependence upon the entity for which work duties are performed. In addition, the NS *OHS Act* creates separate health and safety duties for “self-employed persons”, as does the occupational health and safety legislation in most other Canadian jurisdictions.¹³

6. BOD HEALTH AND SAFETY INITIATIVE

In October 2005, the BOD hosted a symposium to seek input from stakeholders on the current and possible future state of the occupational health and safety system in BC. As part of its health and safety initiative, the BOD also directed WCB staff to develop a forceful, rigorous and comprehensive strategy and policy amendment package to reduce serious injuries and fatalities.

The strategy was to reflect the changing nature of working relationships in BC and to hold each workplace party accountable to the extent that each can influence occupational health and safety. As part of this strategy, policies on workplace status were to be reviewed and amended with a view to enhancing workplace health and safety.

7. PROPOSED WORKPLACE STATUS POLICIES

As discussed above, there is concern that current status policies undermine the WCB’s prevention mandate. There is also concern that some workers are purchasing POP as labour contractors and independent operators, weakening the historic compromise and the principle of universal coverage for workers. As well, this practice has the effect of transferring health and safety obligations, assessment payments and the cost of injuries for experience rating purposes from an “employer” to a “worker”.

In light of these concerns and consistent with the BOD’s strategy to reduce serious injuries and fatalities, the WCB’s Policy and Research Division (“PRD”) has developed draft workplace status policies to replace those contained in items AP1-1-1 to AP1-1-7 of the *AM*. The draft policies do not contain the category of labour contractor. Instead, status categories are limited to “worker”, “employer” and “independent operator”, as provided in the *Act*.

The draft policies incorporate the following general principles to assist in distinguishing workers from independent operators:

- control
- supply of equipment

¹³ In addition to Nova Scotia, Manitoba, Newfoundland, Ontario, Prince Edward Island, Quebec, Saskatchewan and the Yukon have created separate health and safety duties for self-employed persons in their occupational health and safety legislation.

- chance of profit and risk of loss
- business integration

These principles reflect common-law tests for determining whether there is an employment relationship and are consistent with factors considered by other agencies, such as the CRA. The principles would be applied to advance the purposes and objects of the *Act*, including the health and safety mandate.

The four principles would assist the WCB in making a decision on the overall test for an employment relationship - whether the service provider exists as a business enterprise independent of the service recipient for whom the work is done.

A summary of the proposed policy changes is attached as Attachment A.1. The draft status policies are attached as Attachment A.2. Current status policies are attached as Attachment A.3.

7.1 Implications of the Proposed Policies

The PRD has identified the following implications of the proposed workplace status policies:

- Workplace status categories used in policy would be consistent with the *Act*.
- This approach would result in more individuals being considered workers and protected under the health and safety provisions of Part 3 of the *Act*.
- Eliminating the labour contractor category would remove the “safety net” of default to worker status. Individuals would be workers, employers or independent operators. Independent operators who have not purchased POP would not have opted into the workers’ compensation system.
- Criteria in policy for distinguishing between workers and independent operators would be more consistent with common law employment tests. As a result, they would also be more consistent with factors considered by other agencies, such as the CRA and the BC Employment Standards Branch, and by several other Canadian jurisdictions.
- Assessable payroll would increase for employers currently contracting out work to individuals who, on fuller investigation and consideration, are found to be workers under the new policy.
- Criteria encouraging greater investigation of the individual’s circumstances would make the status determination process more time-consuming and would require more administrative resources. On the other hand, there would likely be fewer POP accounts for the WCB to administer.
- Questions would arise about how to deal with the thousands of individuals who have been told that they are labour contractors. Some of these individuals may have POP. Others may have decided not to purchase this coverage, preferring to be considered a worker of the principal contractor. In

addition, the status of one-person limited companies would also have to be reviewed, as many would be considered workers under the draft policy.

8. WORKERS WHO BECOME EMPLOYERS

In considering workplace status, the WCB has identified an opportunity to address an issue not dealt with in the current status policies. Under current policy, service providers who supply labour only and who hire other workers to assist them from time to time have been treated as labour contractors. This has at times led to disputes between workers, employers, and the WCB, especially when such a service provider is injured when he or she does not have workers.

This issue has important prevention, assessment and compensation consequences. As part of the consultation on the proposed status policies, the WCB is seeking input from stakeholders on workers who employ other workers. For example, a contractor supplying labour only who hires workers to complete an unusually large project.

One possibility is to treat all service providers supplying labour only and their workers as workers of a service recipient who would be responsible for assessments and health and safety. Another is to adopt a similar approach dealing only with service providers who hire workers intermittently. A third would be to treat all service providers with workers as employers.

Should the WCB consider labour-only service providers and the workers they employ as workers of the service recipient in all cases, or only when such service providers hire workers intermittently? Or should the WCB consider the service provider who hires other workers to be an employer in every case? If so, how long should such a service provider retain employer status when he or she works for intermittent and possibly long periods without other workers?

9. CONSULTATION

Stakeholders are invited to provide feedback on the draft policy, the issue of workers who become employers, and any additional comments that may be relevant to this issue.

Stakeholder comments will be accepted until **June 9, 2006**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By mail: Policy and Research Division
WorkSafeBC
P.O. Box 5350, Stn. Terminal
Vancouver, B.C. V6B 5L5
By fax: 604 279-7599
By e-mail: policy@worksafebc.com

In addition, comments may be submitted through the online submission form on the WorkSafeBC website.

The BOD will consider the options expressed by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the PRD's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

ATTACHMENT A.1 SUMMARY OF PROPOSED POLICY CHANGES

The proposed changes to the workplace status policies would require the WCB to consider more fully the circumstances of individuals who wish to register as independent operators or employers. Under the proposed policies, WCB officers would no longer determine status solely based on one aspect of a workplace relationship; for example, whether or not the service provider also provides equipment. The draft policies also attempt to make it more difficult for individuals who are workers to register as independent operators, consistent with the WCB's prevention mandate to maintain the protections of the *Act* for workers. The proposed changes are summarized at a high level as follows:

- The seven current policies have been reduced to four, numbered and titled as follows:
 - AP1-1-1 — Determining Status Under the *Act*
 - AP1-1-2 — Employers
 - AP1-1-3 — Workers
 - AP1-1-4 — Independent Operators
- The confusing structure of the current policies has been streamlined.
- The policies now only reference the three workplace status categories set out in the *Act*: workers, employers, and independent operators. The category of labour contractors has been eliminated.
- The proposed policies start with an introductory policy that may be used to determine status for all workplace parties. The policy references four principles that may be applied by WCB officers to distinguish an independent operator from a worker:
 - Control
 - Equipment Supply
 - Chance of Profit and Risk of Loss
 - Integration
- Factors relating to the relationship between a service provider and a service recipient are considered in relation to the four principles above. Many of the factors considered in current policy have been reorganized and fit into the proposed policy.
- The proposed policy uses additional factors established in the common law, by the Canada Revenue Agency, the Employment Standards Branch, and from other workers' compensation jurisdictions to assist WCB officers in making decisions on workplace status.
- After the introductory policy, the three subsequent proposed policies (one each for employers, workers and independent operators) outline possible types of legal entities and rights and responsibilities for each status category. Much of the information in the current policies on workers, employers, and independent operators has been reorganized and placed into the proposed policies.

**ATTACHMENT A.1
SUMMARY OF PROPOSED POLICY CHANGES**

The following table provides more detailed information on the location of material that has been moved from the old policies to the proposed ones, or eliminated from policy. For the sake of conciseness, it refers to the proposed policies only by number. The titles of the proposed policies are referenced above.

Old Policy Item	Placement in Proposed Policy
AP1-1-1 - Coverage Under Act - Descriptions of Terms	<ul style="list-style-type: none"> • The descriptions for "labour contractor", "independent contractor" and "independent firm" have been eliminated - these terms are not consistent with the Act's terminology. • The descriptions for "worker," "employer" and "independent operator" and "firm" have been updated to reflect the Act, and moved to proposed Item AP1-1-1. • Descriptions for "service provider" and "service recipient" have been added to proposed Item AP1-1-1. The policy uses these terms to describe persons or entities before a decision is made as to whether a person or entity is a worker, employer or independent operator.
AP1-1-2 - Coverage Under Act - Types of Relationships	<ul style="list-style-type: none"> • The statement concerning definitions of "worker" and "employer" in (b) Employment Relationships has been eliminated - these are points of interpretation covered by the statements on the WCB's jurisdiction to make these determinations in (c) General Principles to Distinguish Workers and Independent Operators of proposed Item AP1-1-1. • The statements concerning independent firms in (c) Relationships Between Independent Firms have been eliminated, as the concept of an independent firm has been removed from policy in favour of "employer" and "independent operator" for consistency with the Act. • The language differentiating a contract of service (or employment) from a contract for service in (a) General has been updated and moved to (b) General of proposed Item AP1-1-1. • The language concerning the independent authority of the WCB to make status determinations in (b) Employment Relationships has been updated and included in (c) General Principles to Distinguish Workers and Independent Operators of proposed Item AP1-1-1. • The statement providing that employers must register and pay assessments in (b) Employment Relationships has been updated and moved to (a) General of proposed Item AP1-1-2. • The statements concerning a worker's coverage and

**ATTACHMENT A.1
SUMMARY OF PROPOSED POLICY CHANGES**

Old Policy Item	Placement in Proposed Policy
	prohibition from registration in (b) Employment Relationships have been updated and moved to (a) General of proposed Item AP1-1-3.
AP1-1-3 - Coverage Under Act - Distinguishing Between Employment Relationships and Relationships Between Independent Firms	<ul style="list-style-type: none"> • The list of factors in (a) General Principles has been reorganized and placed into (c) General Principles to Distinguish Workers and Independent Operators of proposed Item AP1-1-1. Some factors have not been specifically referenced in the proposed policy as they are less relevant. • The language concerning the major test in (a) General Principles has been updated and placed into (c) General Principles to Distinguish Workers and Independent Operators of proposed Item AP1-1-1. The general statements were moved into the introductory material of the proposed policy, and the examples indicating independence are now factors within the principles of control and integration in the proposed policy. • The language concerning "structure and customs of the particular industry" has been eliminated, as each case must be adjudicated on its own merit. • The first three items in (b) Specific Guidelines are now considered within the four principles of status adjudication in (c) General Principles to Distinguish Workers and Independent Operators of proposed Item AP1-1-1. • Items 4), 5) and 6) in (b) Specific Guidelines have been updated and moved to proposed Item AP1-1-2. • The concluding statement concerning the WCB's authority to make status determinations in (b) Specific Guidelines has been updated and moved to the introductory material in (c) General Principles to Distinguish Workers and Independent Operators of proposed Item AP1-1-1.
AP1-1-4 - Coverage Under Act - Employers	<ul style="list-style-type: none"> • Most of the sections have been updated to reflect the elimination of the labour contractor category, and moved to proposed Item AP1-1-2. • The statements concerning the spouses and children of proprietors and partners in (b) Proprietors and Partners have been updated and moved to (c) Spouses and Children of Proprietors and Partners in proposed Item AP1-1-3. • The statements concerning principals and their spouses and children in (c) Principals of Corporations or Similar Entities have been updated and moved to (d) Workers of Corporations in proposed Item AP1-1-3. • The ideas concerning entities other than corporations in (c) Principals of Corporations have been moved to (e) Other Entities in proposed Item AP1-1-3.

**ATTACHMENT A.1
SUMMARY OF PROPOSED POLICY CHANGES**

Old Policy Item	Placement in Proposed Policy
	<ul style="list-style-type: none"> • The ideas concerning elected officials as workers in (c) Principals of Corporations have been moved to (f) Elected Officials in proposed Item AP1-1-3. There is a new statement in (e) of proposed Item AP1-1-2 concerning the identification of elected officials as employers. • Sections (d) Limited Partnerships, (f) Property Managers and (g) Small Log Suppliers have been eliminated, as they relate to practice matters. • The ideas in section (e) Out of Province Corporations have been included in section (c) Corporations in proposed AP1-1-2.
AP1-1-5 - Coverage Under Act - Workers	<ul style="list-style-type: none"> • The material in (a) General has been updated and included in (a) General of proposed Item AP1-1-3. The statement concerning the "lease" or "rental" of equipment has been updated and moved to the description of the principle of Equipment Supply in (c) General Principles to Distinguish Workers and Independent Operators of proposed Item AP1-1-1. • The statement concerning union delegates in (b) Volunteers has been eliminated, as it relates to practice matters. • Sections (c) Inmates, (d) Order-In-Council Appointments, (e) Forest Firefighters, and (f) Lent Employees have been updated and included in proposed Item AP1-1-3.
AP1-1-6 - Coverage Under Act - Independent Operators	<ul style="list-style-type: none"> • The material in current AP1-1-6 has been updated and moved to proposed Item AP1-1-4.
AP1-1-7 - Coverage Under Act - Labour Contractors	<ul style="list-style-type: none"> • The material in AP1-1-7 has been eliminated, as the category of labour contractor is not used in the proposed policy framework for status adjudication.

**ATTACHMENT A.2
DRAFT STATUS POLICIES**



ASSESSMENT MANUAL

RE: Determining Status Under the Act

ITEM: AP1-1-1

BACKGROUND

1. Explanatory Notes

The POLICY in this Item describes the two types of relationships created by contracts to perform work and the principles used to determine the status of persons and entities under the *Act*.

2. The Act

From section 1:

"employer" includes every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in work in or about an industry

"worker" includes

- (a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;
- (b) a person who is a learner, although not under a contract of service or apprenticeship, who becomes subject to the hazards of an industry within the scope of Part 1 for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment;
- (c) a member of a fire brigade or an ambulance driver or attendant working with or without remuneration, when serving
 - (i) a municipality, a regional district, an urban area, an improvement district, a board of school trustees, a francophone education authority as defined in the School Act, a library board or a parks board, or

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- (ii) a board or commission having the management or conduct of work or services on behalf of any of the bodies in subparagraph (i);
- (d) in respect of the industry of mining, a person while the person is actually engaged in taking or attending a course of training or instruction in mine rescue work under the direction or with the written approval of an employer in whose employment the person is employed as a worker in that industry, or while, with the knowledge and consent of an employer in that industry, either express or implied, he or she is actually engaged in rescuing or protecting or attempting to rescue or protect life or property in the case of an explosion or accident which endangers either life or property in a mine, and this irrespective of whether during the time of his or her being so engaged the person is entitled to receive wages from the employer, or from any employer, or is performing the work or service as a volunteer;
- (e) further, in respect of the industry of mining, a person while he or she is engaged as a member of the inspection committee, appointed or elected by the workers in the mine, to inspect the mine on behalf of the workers;
- (f) an independent operator admitted by the Board under section 2 (2); and
- (g) a person deemed by the Board to be a worker under section 3 (6).

From section 2:

- (1) This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the Board.
- (2) The Board may direct that this Part applies on the terms specified in the Board's direction
 - (a) to an independent operator who is neither an employer nor a worker as though the independent operator was a worker, or
 - (b) to an employer as though the employer was a worker.

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From section 96(1):

- (1) Subject to sections 239 and 240, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under this Part, and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court, and proceedings by or before the Board must not be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court, and an action may not be maintained or brought against the Board or a director, an officer, or an employee of the Board in respect of any act, omission or decision that was within the jurisdiction of the Board or that the Board, director, officer or employee believed was within the jurisdiction of the Board; and, without restricting the generality of the foregoing, the Board has exclusive jurisdiction to inquire into, hear and determine

(Clauses (a) to (g) omitted)

- (h) whether an industry or a part, branch or department of an industry is within the scope of this Part, and the class to which an industry or a part, branch or department of an industry within the scope of this Part should be assigned;
- (i) whether a worker in an industry within the scope of this Part is within the scope of this Part and entitled to compensation under it; and
- (j) whether a person is a worker, a subcontractor, a contractor or an employer within the meaning of this Part.

POLICY

(a) Descriptions of Terms

Employer – An employer includes a person or entity hiring a worker or workers under a contract of service. An employer may be a proprietor in a proprietorship, a partner in a partnership, a corporation, or another type of legal entity. For more information on employers, see Item AP1-1-2 *Employers*.

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Worker – A worker includes a person who performs work under a contract of service with an employer. For more information on workers, see Item AP1-1-3 *Workers*.

Independent Operator – “Independent operator” is not defined in the *Act*. The term is referred to in section 2(2) of the *Act* as being a person “who is neither an employer nor a worker” and to whom the Board may direct that Part 1 applies as though the independent operator was a worker. For the purposes of section 2(2) of the *Act*, an independent operator is a person with no workers who performs work under a contract for service. An independent operator has a business existence independent of the person or entity for whom the work is performed. Independent operators may be proprietors or partners. For more information on independent operators, see Item AP1-1-4 *Independent Operators*.

Firm – A firm is any person or entity carrying on a business. This *Manual* uses the term “firm” to refer generally to persons or entities engaged in business or work. Depending upon the context, this may refer to an employer, an independent operator or some other category of person or entity.

Service Provider – For the purposes of this policy, a service provider is a person providing labour and possibly goods or equipment. A service provider may be a worker or an independent operator.

Service Recipient – For the purposes of this policy, a service recipient is the person or entity contracting the work of a service provider. Where a service provider is a worker, the service recipient is that worker's employer.

(b) Types of Workplace Relationships

Where a service provider contracts with a service recipient to do work, the contract creates one of two types of relationships. The relationship is either one of

- 1) a contract of service, or employment, between an employer and a worker, or
- 2) a contract for service between independent business persons, each of whom may be an employer or an independent operator.

When determining whether there is a contract of service or a contract for service, the difficult question is often whether the relationship causes a service provider to be a worker or an independent operator.

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(c) Board Jurisdiction

The Board, for the purposes of the *Act*, has the exclusive power under section 96(1) to determine status, that is, whether a contract of service or a contract for service exists. In making such a determination, the Board is not bound by the determinations of other agencies or authorities. The Board will determine status with regard to the context and the overall purposes of the *Act*.

The Board's jurisdiction cannot be excluded by private agreement between parties, whether the agreement does this expressly or indirectly by labeling the parties as independent operators. The Board makes its own decision on their status. However, decisions made by the Board are for the purposes of the *Act* only and have no binding authority under other statutes.

A person's status is based on the circumstances existing at a particular time. If there is a material change in circumstances, the person's status may change so that the Board will make a new status decision.

(d) Principles to Distinguish Workers and Independent Operators

To identify whether a service provider is a worker or an independent operator, the Board determines whether the service provider exists as a business enterprise independent of the service recipient for whom the work is done.

No person or entity in business is completely independent of all others. The question is whether a service provider contracting to a service recipient has a sufficient degree of independence to be an independent operator. If there is not a sufficient degree of independence, the service provider is a worker, and the service recipient is the worker's employer.

In determining whether a service provider exists as an independent business enterprise, the Board considers the four general principles described in this policy. When considering these principles, there is no exhaustive list of factors that can be consistently applied in every case. Instead, each factor considered relevant by the Board is weighed in the context of the particular facts and circumstances of the case at issue. The Board will consider a relevant factor regardless of whether it fits clearly within one of the four principles.

The Board considers the contracting parties' actual relationship. A contract may be considered as evidence, but only as an indicator of how the relationship may function on a day-to-day basis.

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1. Control

Control includes the power to direct three primary aspects of the service provider's work: the work to be done, the means by which the work is done, and the time and place the work is done. The more control the service recipient has, the more likely the service provider is a worker.

Control exists where the service recipient does not directly control the service provider's activities, but has the right to do so. The degree of control actually exercised by the service recipient may vary depending on the type of work to be done and the service provider's experience and skill.

Another factor the Board may consider is whether the service provider has the right to hire workers. Where this is the case, this factor suggests the service provider has a stronger degree of control.

In addition, the Board considers whether the service recipient is best able to control workplace safety and fulfill the prevention and other obligations of an employer under the *Act*.

2. Equipment Supply

Where the service recipient supplies major equipment used by the service provider, this factor suggests the service provider is a worker. In such cases the service recipient is also usually responsible for the expenses related to the use of the equipment, including repairs, insurance, transport, rental, and operation (e.g. fuel).

Where the service provider supplies his or her own major equipment and is responsible for expenses related to its use, this factor suggests the service provider is an independent operator. However, a service provider may operate under circumstances where the "lease" or "rental" of equipment is a device to arrive at a wage or commission amount. In such cases, this factor suggests the service provider is a worker.

Major equipment is that required to complete the actual work contracted for, and which represents a significant capital outlay to supply. The Board does not consider hand tools (including chain saws) and vehicles used for personal transportation or to transport lesser equipment as major equipment.

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3. Chance of Profit and Risk of Loss

Where a service provider does not bear a significant chance of profit or risk of loss in relation to the services provided, this factor suggests he or she is a worker. Typically, at least a portion of a worker's earnings do not depend on whether the employer's business is profitable.

In contrast, the chance of profit and risk of loss are inherent for an independent operator. If a service provider takes a real financial risk in relation to the services provided, this factor suggests there is a separate business existence.

The Board does not consider minor consumables (e.g. nails, paper, or ink) in assessing the chance of profit and risk of loss.

4. Integration

Integration is considered in regard to the service provider, not the service recipient. Where the service provider integrates his or her work into the service recipient's operations, this factor suggests the service provider has worker status.

In cases where the service provider represents or acts on behalf of the service recipient, is connected with the service recipient's business, and is dependent on it, a greater degree of integration exists.

Where the service provider keeps his or her books and records as an independent business, has the ability to negotiate the terms of a contract, may accept or decline to perform a task, or may accept or decline to take multiple contracts with different firms, these factors suggest the service provider is less integrated with the service recipient.

The Board may also consider licensing and permits. If the service provider holds the required licenses or permits to do the work contracted for, this factor suggests the service provider is less integrated with the service recipient. If the service recipient holds licenses or permits for the service provider's work, this factor suggests the service provider is more integrated with the service recipient.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

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EFFECTIVE DATE: To be determined.
AUTHORITY: ss.1, 2, and 96 *Workers Compensation Act*.
CROSS REFERENCES:
HISTORY:
APPLICATION:

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RE: Employers

ITEM: AP1-1-2

BACKGROUND

1. Explanatory Notes

The POLICY in this Item sets out guidelines describing an employer, and the requirement for an employer to register with the Board and pay assessment premiums.

2. The Act

From section 1:

“employer” includes every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in work in or about an industry

POLICY

(a) General

An employer includes a person or entity hiring a worker or workers under a contract of service. An employer may be a proprietor in a proprietorship, a partner in a partnership, a corporation, or another type of legal entity.

Registration with the Board is required for an employer, unless exempted by the *Act* or by policy. The Board has exempted some persons or entities who would otherwise be employers from registration. See Item AP1-2-1 *Exemptions From Coverage* for more information.

An employer must pay assessments based on worker payroll. An employer generally does not have to pay assessment premiums for another employer or a contracted independent operator, regardless of whether the employer or independent operator is registered. However, there may be exceptions to this policy under sections 49, 51 or 52 of the *Act*, or other reasons determined by the Board.

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(b) Proprietorships and Partnerships

A proprietor or partner who is an employer only has personal compensation coverage if he or she purchases Personal Optional Protection.

(c) Corporations

A company incorporated in BC or another jurisdiction is the employer of any of the following persons working in BC:

- a director, an officer, a shareholder or another principal of the company who is active in the operation of the company,
- a spouse, a child or another family member of a principal or shareholder for whom earnings are reported for income tax purposes or are otherwise remunerated and who is active in the operation of the company, and
- any other worker employed by the corporation.

Refer to Item AP1-1-3 *Workers* for information on identifying the above persons as workers.

An incorporated company will not be registered in circumstances where there is evidence that the company is not sufficiently independent of the firm for which it provides work. If such circumstances exist, the Board investigates and the company's position is determined in accordance with the policies in this *Manual*. Three common situations where a corporation will not be registered because there is not a sufficient degree of independence are where:

- 1) The corporation is a personal service corporation. A personal service corporation for this purpose is one in which no worker other than an active shareholder is employed, and if the firm was not incorporated, each active shareholder would clearly be a worker of the person or entity contracting the corporation's services. If, without incorporation, the firm would be an independent operator, it would not be considered a personal service corporation.
- 2) The corporation's sole function is to provide an inescapable phase of another firm's operations, it provides services only for that firm, and the two firms are affiliated. The test for whether the firms are affiliated is set out in Item AP1-42-3 *Transfer of Experience*. In such cases, the corporation is assessed through the operating company at the assessment rate of the operating company. If the corporation is working

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for more than one firm, or there is no affiliation, the corporation is considered a separate employer.

- 3) The corporation is a personal financial holding company as described in Item AP1-2-1 *Exemptions From Coverage*.

(d) Other Entities

An entity such as a society, a cooperative, or a trade union is an employer if it has workers.

(e) Elected Officials

An elected official in provincial/municipal government, a school or library board, or similar entity is not considered the employer of any government, school, library or other such workers under his or her direction. However, if such an elected official maintains an office for campaign or personal purposes and the official pays workers at that office, the official is the employer of such workers. Personal Optional Protection is not available to elected officials.

(f) Labour Supply Firms

A labour supply firm is the employer of any worker it contracts to perform work, even when the work is performed for or under the direction of another firm.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

EFFECTIVE DATE:	To be determined.
AUTHORITY:	ss. 1, 2, and 96 <i>Workers Compensation Act</i> .
CROSS REFERENCES:	
HISTORY:	
APPLICATION:	

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RE: Workers

ITEM: AP1-1-3

BACKGROUND

1. Explanatory Notes

The POLICY in this Item sets out guidelines describing a worker, and the exclusion of workers from registration or paying assessment premiums.

2. The Act

From section 1:

"worker" includes

- (a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;
- (b) a person who is a learner, although not under a contract of service or apprenticeship, who becomes subject to the hazards of an industry within the scope of Part 1 for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment;
- (c) a member of a fire brigade or an ambulance driver or attendant working with or without remuneration, when serving
 - (i) a municipality, a regional district, an urban area, an improvement district, a board of school trustees, a francophone education authority as defined in the School Act, a library board or a parks board, or
 - (ii) a board or commission having the management or conduct of work or services on behalf of any of the bodies in subparagraph (i);
- (d) in respect of the industry of mining, a person while the person is actually engaged in taking or attending a course of training or instruction in mine rescue work under the

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direction or with the written approval of an employer in whose employment the person is employed as a worker in that industry, or while, with the knowledge and consent of an employer in that industry, either express or implied, he or she is actually engaged in rescuing or protecting or attempting to rescue or protect life or property in the case of an explosion or accident which endangers either life or property in a mine, and this irrespective of whether during the time of his or her being so engaged the person is entitled to receive wages from the employer, or from any employer, or is performing the work or service as a volunteer;

- (e) further, in respect of the industry of mining, a person while he or she is engaged as a member of the inspection committee, appointed or elected by the workers in the mine, to inspect the mine on behalf of the workers;
- (f) an independent operator admitted by the Board under section 2 (2); and
- (g) a person deemed by the Board to be a worker under section 3 (6).

POLICY

(a) General

A worker includes a person who performs work under a contract of service with an employer. A worker generally receives payment in respect of the service provided. Payment may be made on an hourly, salaried, commission, piecework or other basis. The principles used to determine whether a person is a worker are set out in Item AP1-1-1 *Determining Status Under the Act*. The Board will not accept an application for registration from a worker.

The Board has extended coverage to some persons who would not otherwise be workers, as described in Item AP1-3-1 *Extending Application of the Act*. The Board has also exempted some persons who would otherwise be workers from coverage, as described in Item AP1-2-1 *Exemptions From Coverage*.

(b) Proprietors and Partners

Where a proprietorship or partnership has no workers, the Board considers the principles set out in Item AP1-1-1 *Determining Status Under the Act* to determine whether a proprietor or a partner is a worker or an independent operator.

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A proprietor or partner who is an employer or an independent operator is a worker under the *Act* if he or she purchases Personal Optional Protection.

(c) Spouses and Children of Proprietors and Partners

Each child of a proprietor or partner working under a contract of service for the proprietorship or partnership is a worker, regardless of age.

The spouse of a proprietor is exempted from coverage, as set out in Item AP1-2-1 *Exemptions From Coverage*. However, such an individual is a worker where the Board grants voluntary coverage on application, as set out in Item AP1-2-2 *Requesting a Variance from a General Exemption*.

The spouse of a partner who works under a contract of service for the partnership is a worker.

(d) Workers of Corporations

When working in BC, the following parties are workers of a corporation incorporated in BC or another jurisdiction:

- a director, an officer, a shareholder or another principal of the company who is active in the operation of the company,
- a spouse, a child or another family member of a principal or shareholder for whom earnings are reported for income tax purposes or are otherwise remunerated and who is active in the operation of the company, and
- any other worker employed by the corporation.

However, if a sole, active principal of a limited company is injured at a time when the company was not registered as an employer with the Board, the principal will not be covered under Part 1 of the *Act* and a claim by the principal or his or her dependants will be denied.

For the same reason, a claim from one of several principals of a company that was unregistered at the time of the injury, or in the case of fatality, his or her dependants, will be denied unless the evidence establishes that the principal was not personally responsible for the failure to register. The term "principal" includes persons who would be proprietors or partners in the business if the business were not incorporated.

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In determining whether a principal was personally responsible for a failure to register, the factors considered include whether the principal was:

- a minority or majority shareholder;
- a director of the company;
- carrying out management functions or simply doing work that an employee would normally do; and
- responsible for doing other functions equivalent to those associated with the Board, such as dealing with income tax or employment insurance.

If an injured principal of a company is denied compensation benefits under this policy, that principal's earnings prior to the date of injury are not assessed.

If a principal responsible for registering a company has done so but the company has defaulted in paying assessments, a claim from the principal or his or her dependants will be honoured but a deduction from the resulting benefits is made to offset the debt.

(e) Other Entities

An active officer of a society, cooperative, trade union or similar entity is considered a worker in the same manner as an officer or principal of a limited company.

(f) Elected Officials

An elected official in provincial/municipal government, a school or library board, or similar agency is not considered a worker, and is therefore not covered under the *Act* in his or her capacity as an elected official. Personal Optional Protection is not available to such individuals.

(g) Volunteers

A volunteer or other person receiving nominal or no payment for services is generally not a worker.

A social service agency may operate a sheltered workshop to provide mentally or physically handicapped persons with training or life enrichment opportunities in a workshop environment. Coverage applies only to the paid workers of the organization and paid instructors in the workshop, and not to the participants in

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the program, whether or not they receive a living allowance, incentive allowance, or nominal payment from the Provincial Government, directly or indirectly.

Certain volunteer firefighters or ambulance drivers and attendants are included in the definition of “worker” in section 1. This includes a person requested to assist at the scene of a fire by the Fire Chief or authorized delegate and whose name is recorded. Only those individuals under the direction and control of the Fire Chief or authorized delegate are covered.

(h) Inmates

A prison inmate is considered a worker if he or she is involved in a work-release program and is permitted to work outside of the institution under a contract of service with an employer, whether or not he or she is required to return daily to the institution. Similarly, a prison inmate who is conscripted to fight forest fires is considered a worker.

(i) Order-in-Council appointments

Order-in-Council appointments are generally to positions that operate autonomously, not under a contract of service or a contract for service. Such positions include judges, coroners and the members of the Board of Directors of the Board. These persons are not workers and Personal Optional Protection is not available as they are also not independent operators.

However, some Order-in-Council appointments are for positions where there is a strong element of direction and control such as a secretary to a Provincial Government Minister. In these situations, a contract of service exists and the person is a worker.

(j) Forest firefighters

The Provincial Government has authority to conscript members of the public to fight forest fires. In the event of an injury, the conscripted member of the public is considered a worker of the Provincial Government under the “Fire Suppression Vote”.

When logging companies receive “cutting rights”, they are required to fight fires which occur on those properties. If a worker of the logging company sustains an injury while fighting a fire prior to the Provincial Government assuming control of the fire, he or she is considered a worker of the logging company.

Once the Provincial Government assumes control of the fire, all persons working in the firefighting operation are workers of the provincial Government, except

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where the firefighter is employed by a firm, or is an independent operator contracted by the Provincial Government for the purpose of fighting the fire.

(k) Lent workers

An employer may lend or second a worker to another firm by transferring control and integration of the worker to the other firm. In such cases, the lent or seconded worker is the worker of the other firm for the purposes of Part 1 of the *Act*. This does not apply in cases involving labour supply firms.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

EFFECTIVE DATE:	To be determined.
AUTHORITY:	ss. 1, 2 and 96 <i>Workers Compensation Act</i> .
CROSS REFERENCES:	
HISTORY:	
APPLICATION:	

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DRAFT STATUS POLICIES**



ASSESSMENT MANUAL

RE: Independent Operators

ITEM: AP1-1-4

BACKGROUND

1. Explanatory Notes

The POLICY in this Item describes independent operators, and explains the option for an independent operator to obtain coverage.

2. The Act

From section 1:

“worker” includes

- (g) an independent operator admitted by the Board under section 2(2)

From section 2(2):

- (2) The Board may direct that this Part applies on the terms specified in the Board’s direction
 - (a) to an independent operator who is neither an employer nor a worker as though the independent operator was a worker...

POLICY

Section 2(2) of the *Act* refers to an “independent operator” as being a person “who is neither an employer nor a worker” and to whom the Board may direct that Part 1 applies as though the independent operator was a worker.

For the purposes of section 2(2) of the *Act*, an independent operator is a person with no workers who performs work under a contract for service. An independent operator has a business existence independent of the person or entity for whom the work is performed. Independent operators may be proprietors or partners. The principles to determine whether a person is an independent operator are set out in Item AP1-1-1 *Determining Status Under the Act*.

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Registration with the Board is optional for an independent operator. An independent operator may register with the Board by purchasing Personal Optional Protection.

An independent operator who does not register with the Board is excluded from coverage under Part 1 of the *Act*. However, an independent operator who registers with the Board by purchasing Personal Optional Protection is a worker for the purposes of the *Act*.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

EFFECTIVE DATE:	To be determined.
AUTHORITY:	ss. 1, 2 and 96 <i>Workers Compensation Act</i> .
CROSS REFERENCES:	
HISTORY:	
APPLICATION:	

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RE: Coverage under Act – Descriptions of Terms	ITEM: AP1-1-1
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BACKGROUND

1. Explanatory Notes

Items AP1-1-2 to AP1-1-7 of this *Manual* deal with determining the status of persons under Part 1 of the *Workers Compensation Act*. This Item provides very general descriptions of the main terms used in those Items.

2. The Act

Section 1:

“employer” includes every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in work in or about an industry ...

“worker” includes

- (a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;
- (b) a person who is a learner, although not under a contract of service or apprenticeship, who becomes subject to the hazards of an industry within the scope of Part 1 for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment;
- (c) when serving a municipality, an urban area, an improvement district or a regional district under the *Local Government Act*, a board of school trustees, a francophone education authority as defined in the *School Act*, a library board, a parks board, the city of Vancouver or a board or commission having the management or conduct of work or services on behalf of a municipality, urban area, improvement district, regional district, board of school trustees, francophone

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education authority as defined in the *School Act*, library board, parks board or the city of Vancouver, a member of a fire brigade or an ambulance driver or attendant working with or without remuneration;

- (d) in respect of the industry of mining, a person while the person is actually engaged in taking or attending a course of training or instruction in mine rescue work under the direction or with the written approval of an employer in whose employment the person is employed as a worker in that industry, or while, with the knowledge and consent of an employer in that industry, either express or implied, he or she is actually engaged in rescuing or protecting or attempting to rescue or protect life or property in the case of an explosion or accident which endangers either life or property in a mine, and this irrespective of whether during the time of his or her being so engaged the person is entitled to receive wages from the employer, or from any employer, or is performing the work or service as a volunteer;
- (e) further, in respect of the industry of mining, a person while he or she is engaged as a member of the inspection committee, appointed or elected by the workers in the mine, to inspect the mine on behalf of the workers;
- (f) an independent operator admitted by the Board under section 2 (2)

Section 2:

- (1) This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the Board.
- (2) The Board may direct that this Part applies on the terms specified in the Board's direction
 - (a) to an independent operator who is neither an employer nor a worker as though the independent operator was a worker, or
 - (b) to an employer as though the employer was a worker.

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POLICY

The following, very general, descriptions may assist in understanding the various categories of persons to whom this *Manual* refers. These descriptions must be read in the context of the *Act* and the *Manual*.

- *Employer* – An employer is a person or entity employing workers. The employer may be a sole proprietor, a partner in a partnership, a corporation, or another type of legal entity. “Employer” is defined under section 1 for purposes of Part 1 of the *Act*. An employer is an “independent firm”.
- *Worker* – A worker is an individual who performs work under a contract with an employer and has no business existence under the contract independent of the employer. “Worker” is defined under section 1 for purposes of Part 1 of the *Act*. A worker cannot be an “independent firm”.
- *Independent Operator* – “Independent operator” is not defined in the *Act*. The term is referred to in section 2(2) of the *Act* as being an individual “who is neither an employer nor a worker” and to whom the Board may direct that Part 1 applies as though the independent operator was a worker. An independent operator performs work under a contract, but has a business existence independent of the person or entity for whom that work is performed. An independent operator is an “independent firm”.
- *Labour Contractor* – The Board has created the term “labour contractor” to assist it in determining whether an individual is an employer, worker or independent operator. A labour contractor who is a worker cannot be an “independent firm”. For more information about “labour contractors”, see Item AP1-1-7.
- *Firm* – A firm is any person or entity carrying on a business.
- *Independent Firm* – The Board has created the term “independent firm” to identify those persons who are either required by the *Act* to register with the Board as employers of workers, or from whom, as unincorporated employers or independent operators, the Board will accept a registration through the purchase of Personal Optional Protection for themselves. An independent firm performs work under a contract, but has a business existence under the contract

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independent of the person or entity for whom that work is performed. An independent firm may be an individual, a corporation or another type of legal entity. A worker cannot be an “independent firm”. For more information about “independent firms”, see Item AP1-1-3.

- *Independent Contractor* – An independent contractor is an independent firm.

This Manual also commonly uses the term “firm” to refer generally to persons engaged in business or work. Depending upon the context, this may refer to an “independent firm”, a “labour contractor” or some other category of persons.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss.1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6), Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Exemptions from Coverage (AP1-2-1), Personal Optional Protection (AP1-2-3), Extending Application of the <i>Act</i> (AP1-3-1), Fishing (AP1-4-1), Coverage under Federal Statutes or Agreements Between the Provincial and Federal Governments (AP6-97-1) in the <i>Assessment Manual</i> , and Introduction – Workers and Employers Covered by the <i>Act</i> (policy item #3.00), Coverage of Workers (policy item #5.00), Definitions of “Worker” and “Employer” (policy item #6.00), Nature of Employment Relationship (policy item #6.10), Federal Government Employees (policy item #8.10) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	New policy.
APPLICATION:	Volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> .

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RE: Coverage under Act – Types of Relationships	ITEM: AP1-1-2
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BACKGROUND

1. Explanatory Notes

The POLICY in this Item describes the two types of relationships created by contracts to perform work and the consequences of which relationship is created by a particular contract. The POLICY in Item AP1-1-3 sets out the general principles for determining whether a contract to perform work creates an employment relationship or a relationship between independent firms.

3. The Act

See AP1-1-1.

POLICY

(a) General

Where a person contracts with another person or entity to do work, the contract creates one of two types of relationship. The relationship is either one of employment or one between independent firms.

(b) Employment relationships

If the contract creates an employment relationship, the individual doing the work is a “worker” covered by the *Act* and the other party to the contract is required to register with the Board as an “employer” and pay assessments on the earnings payable under the contract. In this situation, any application from the individual doing the work for registration as an employer will not be accepted by the Board.

The definitions of “worker” and “employer” in the *Act* are not exhaustive, so that persons may be “workers” or “employers” even though they have not entered into or are not working under a contract of service or hiring.

The definitions of “worker” and “employer” are treated as complementary. The question in each case is whether the relationship between two parties is to be classified as one of employment. The scope of the definitions must be

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determined in the context in which they appear and the overall purposes of the *Act*. The Board will not automatically attribute to each word or phrase the meaning that has been given by another tribunal for other purposes. Coverage under the *Act* may commence for a worker even though by common law principles no contract of service yet exists.

(c) Relationships between independent firms

If the contract creates a relationship between independent firms, the rights and responsibilities of the firms depend upon their specific circumstances:

- An independent firm that has at least one worker must register with the Board as an employer and pay assessments. An unincorporated employer may also obtain personal compensation coverage for himself or herself by purchasing Personal Optional Protection.
- An independent firm that does not have at least one worker is not required to register with the Board. The individual who is the independent firm may, as an independent operator, obtain personal compensation coverage by purchasing Personal Optional Protection.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss.1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6), Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Exemptions from Coverage (AP1-2-1), Personal Optional Protection (AP1-2-3), Extending Application of the <i>Act</i> (AP1-3-1), Fishing (AP1-4-1) and Coverage under Federal Statutes or Agreements Between the Provincial and Federal Governments (AP6-97-1) in the <i>Assessment Manual</i> , and Introduction – Workers and Employers Covered by the <i>Act</i> (policy item #3.00), Coverage of Workers (policy item #5.00), Definitions of “Worker” and “Employer” (policy item #6.00), Nature of Employment Relationship (policy item #6.10), Federal

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HISTORY:

Government Employees (policy item #8.10) in the *Rehabilitation Services & Claims Manual*, Volume II.

Replaces in part Policy No. 20:10:30 and 20:30:20 of the *Assessment Policy Manual* and Decisions No. 26, 32, 138, 183 and 255 of volumes 1 - 6 of the *Workers' Compensation Reporter*.

APPLICATION:

This Item results from the 2002 "editorial" consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

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**RE: Coverage under Act –
Distinguishing Between Employment
Relationships and Relationships Between
Independent Firms**

ITEM: AP1-1-3

BACKGROUND

1. Explanatory Notes

The POLICY in this Item sets out the general principles for determining whether a contract to perform work creates an employment relationship or a relationship between independent firms.

2. The Act

See Item AP1-1-1.

Section 96(1):

Subject to sections 239 and 240, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under this Part, and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court, and proceedings by or before the Board must not be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court, and an action may not be maintained or brought against the Board or a director, an officer, or an employee of the Board in respect of any act, omission or decision that was within the jurisdiction of the Board or that the Board, director, officer or employee believed was within the jurisdiction of the Board; and, without restricting the generality of the foregoing, the Board has exclusive jurisdiction to inquire into, hear and determine

(Clauses (a) to (g) omitted)

- (h) whether an industry or a part, branch or department of an industry is within the scope of this Part, and the class to which an industry or a part, branch or department of an industry within the scope of this Part should be assigned;

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- (i) whether a worker in an industry within the scope of this Part is within the scope of this Part and entitled to compensation under it; and
- (j) whether a person is a worker, a subcontractor, a contractor or an employer within the meaning of this Part.

POLICY

(a) *General principles*

In distinguishing an employment relationship from one between independent firms, there is no single test that can be consistently applied. The factors considered include:

- whether the services to be performed are essentially services of labour;
- the degree of control exercised over the individual doing the work by the person or entity for whom the work is done;
- whether the individual doing the work might make a profit or loss;
- whether the individual doing the work or the person or entity for whom the work is done provides the major equipment;
- if the business enterprise is subject to regulatory licensing, who is the licensee;
- whether the terms of the contract are normal or expected for a contract between independent contractors;
- who is best able to fulfill the prevention and other obligations of an employer under the *Act*;
- whether the individual doing the work engages continually and indefinitely for one person or works intermittently and for different persons; and
- whether the individual doing the work is able or required to hire other persons.

The major test, which largely encompasses these factors, is whether the individual doing the work exists as a business enterprise independently of the person or entity for whom the work is done.

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No business organization is completely independent of all others. It is a question of degree whether a party to a contract has a sufficient amount of independence to warrant registration as an employer. Many small parties may only contract with one or two large firms over a period of time. Yet they are often independent of the person with whom they are contracting in significant respects. For example, they must seek out and bid for their own contracts, keep their own books and records, make income tax, unemployment insurance and Canada Pension Plan deductions. They also retain the right to hire and fire their own workers and exercise control over the work performed by their workers. These factors must be considered.

Some regard must also be paid to the structure and customs of the particular industry involved. Where an industry makes much use of the contracting out of work, this should be recognized as a factor in considering applications for registration as employers by parties to contracts in those industries.

(b) Specific guidelines

Parties who would be considered independent firms include:

- (1) Any firm supplying labour and materials on which a profit or loss may result. Items such as nails and drywall tape are not considered materials for this purpose.
- (2) Any firm which has two or more pieces of revenue producing equipment. Hand tools and personal transportation vehicles or vehicles used to move equipment are not considered to be revenue producing equipment.
- (3) Service industry firms that enter into two or more contracts simultaneously.
- (4) Incorporated companies unless there are circumstances indicating that the principals of the corporation are workers rather than independent firms. If such circumstances exist, a full investigation will be made and the applicant's position determined in accordance with the policies in this *Manual*. Two common situations where corporations will not be considered independent firms are where:
 - (i) the corporation is a personal service corporation, (A personal service corporation for this purpose is one where no worker other than a principal active shareholder is employed, and if the firm was not incorporated, the principal active shareholder would clearly be a worker. If, without incorporation, the firm would be a labour contractor, it would not be considered a personal service corporation.); or

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- (ii) the corporation's sole function is to provide an inescapable phase of a firm's operations, it is providing essentially labour only for one firm at a time, and there is a degree of common ownership between the two firms. In such cases, the corporation will be assessed through the operating company at the assessment rate of the operating company. If the corporation is working for more than one firm, or there is not common ownership, the company will be considered a separate employer.
- (5) Society, cooperative, trade union or similar entity.
- (6) Manpower supply firms.

These guidelines will resolve the question whether a particular person or entity is an "independent firm" in most cases.

The Board, for the purposes of the *Act*, has the exclusive power under section 96(1) to determine status. The Board's jurisdiction cannot be excluded by private agreement between two parties, whether the agreement does this expressly, or indirectly by labelling the parties as independent operators (who would therefore be independent firms). The Board makes its own judgment of their status, having regard to the terms of the contract and the operational routines of the relationship. However, decisions made by the Board are for workers' compensation purposes only and have no binding authority under other statutes.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 1, 2 and 96(1), <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6) and Coverage under <i>Act</i> – Labour Contractors (AP1-1-7) in the <i>Assessment Manual</i> and Introduction – Workers and Employers Covered by the <i>Act</i> (policy item #3.00), Coverage of Workers (policy item #5.00), Definitions of "Worker" and "Employer" (policy item #6.00), Nature of Employment Relationship (policy item #6.10), Federal Government Employees (policy item #8.10) and Actions by Employers (policy item #47.10) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces in part Policies No. 20:10:30, 20:30:20 and 20:30:30 of the <i>Assessment Policy Manual</i> and Decisions No. 32, 138, 183, 229, 255

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and 335 of volumes 1 - 6 of the *Workers' Compensation Reporter*. Consequential changes were subsequently made to the restatement of the *Act* in accordance with the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003.

APPLICATION:

This Item results from the 2002 "editorial" consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

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RE: Coverage under Act – Employers

ITEM: AP1-1-4

BACKGROUND

1. Explanatory Notes

The POLICY in this Item sets out the guidelines for determining who is an employer in certain specific situations.

2. The Act

See Item AP1-1-1.

POLICY

(a) General

An employer is a person or entity employing workers. The employer may be a sole proprietor, a partnership, a corporation, or another type of legal entity. An employer may also be an independent contractor who employs workers or a labour contractor who employs workers and elects to be registered as an employer. An employer is an “independent firm” for purposes of Item AP1-1-3.

(b) Proprietors and partners

Proprietors and partners of an unincorporated business are employers if the business has workers and independent operators if the business does not have workers. They do not have personal compensation coverage unless they have Personal Optional Protection.

The children of a proprietor or partner who are paid by the proprietorship or partnership and have an employment relationship are considered to be workers, regardless of age. Spouses of single proprietors have been exempted from coverage, but the spouse of a partner who is working for the partnership and is paid for his or her services is a worker.

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(c) *Principals of corporations or similar entities*

As the incorporated entity is considered the employer, a director, shareholder or other principal of the company who is active in the operation of the company is generally considered to be a worker under the *Act*. A spouse, child or other family member of a principal or a shareholder for whom earnings are reported for income tax purposes is considered to be active in the business and a worker.

If a sole, active principal of a limited company is injured at a time when the company was not registered as an employer with the Board, the principal will not be considered a worker at that time and a claim by the principal or his or her dependents will be denied. For the same reason, a claim from one of several principals of a company that was unregistered at the time of the injury, or in the case of fatality, his or her dependents, will be denied unless the evidence indicates that the principal was not personally responsible for the failure to register. The term “principal” covers persons who would be proprietors or partners in the business if the business were not incorporated.

In determining whether a principal was personally responsible for a failure to register, the factors considered include whether the principal was:

- a minority or majority shareholder;
- a director of the company;
- carrying out management functions or simply doing work that an employee would normally do; and
- responsible for doing other functions equivalent to those associated with the Board, such as dealing with income tax or employment insurance.

If an injured principal of a company is denied compensation benefits under this policy, that principal's earnings prior to the date of injury are not assessed. Claims from a responsible principal of a company that has registered but has defaulted in paying assessments, or his or her dependents, will be honoured but a deduction from the resulting benefits will be made to offset the debt.

Active officers of a society, cooperative, trade union or similar entity are considered workers in the same manner as principals of a limited company.

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However, elected officials in provincial/municipal government, school or library boards, and similar agencies are not considered workers or employers and are therefore not covered under the *Act* in their capacity as elected officials. Personal Optional Protection is not available to these individuals.

(d) Limited partnerships

For assessment purposes, only the “general” partners of limited partnerships registered under the *Partnership Act* will be registered as the employer. The general partners are responsible for the payment of assessments and to fulfill all other employer obligations under the *Act*.

Limited partners are neither considered workers nor employers as they do not participate in the business and are confined to providing investment. If they become active in the business they are regarded as general partners and would be subject to the provision of the *Act*.

(e) Out-of-province corporations

A firm which is not incorporated either in BC or federally in Canada, but claims to be incorporated in another jurisdiction will be treated the same as a firm legally incorporated in BC.

(f) Property managers

In all situations, a property management firm must register as an employer of its own direct workers. The main question that arises is whether it needs to register for the staff in the buildings that it manages.

Apartment management firms usually work on a “cost plus” basis. They pay the caretakers, managers, and other expenses for which they are reimbursed out of the owner’s rental income, and receive a fee from the owner. In these situations, the property management firm may choose to register as the employer.

If the property management company chooses to register for the buildings it administers, it is responsible for all the employer obligations under the *Act*. The building owner is not then required to register. The property management firm must pay assessments on the on-site building personnel, casual temporary workers engaged in the repair or maintenance of the building as well as its own office staff who do any work in the property management field. This applies to all buildings it manages. If the property management firm has another business activity, such as a real estate operation, the multiple classification rules apply.

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If the property manager does not register for a building it manages, that building's owner is regarded as the employer of any on-site personnel engaged in the operation of the building as well as any casual workers directed by the property management firm for the purpose of repair or maintenance of the building.

If a property management firm is paid a fixed fee by the owner or owners of a commercial or apartment building, out of which it hires such persons as janitors, caretakers, managers, and pays other expenses, and has the potential to incur a gain or loss, the firm is regarded as the employer. The property management firm will have to register and pay assessments on the earnings of all workers engaged in the operation of the building as well as its own office staff. If it operates on a "fixed fee" basis for some buildings and acts as an agent on other buildings, the multiple classification rules will apply.

This policy does not apply to hotels, motels and similar properties.

(g) Small log suppliers

Sawmills may purchase logs from small log suppliers such as farmers clearing their own land or other individuals who hold timber cutting licenses. Regardless of whether the sawmill or the supplier selects and pays the contractors who cut down and move the logs, the party who makes the contractual agreement with the contractor will be considered the contractor's employer. The employer will be directly responsible for assessments on non-registered contractors.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6), Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Exemptions from Coverage (AP1-2-1), Personal Optional Protection (AP1-2-3), Classification – Multiple (AP1-37-2), Payroll – Categories (AP1-38-2) with regard to principals of corporations and Payroll – Out-of-Province Employers (AP1-38-4) in the <i>Assessment Manual</i> .

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HISTORY:

Replaces in part Policies No. 20:10:30, 20:30:20, 20:30:30, 20:30:50, 20:40:50, 20:50:10, 40:10:30 and 40:20:60 of the *Assessment Policy Manual* and Decisions No. 138, 229, 255 and 335 of volumes 1 - 6 of the *Workers' Compensation Reporter*.

APPLICATION:

This Item results from the 2002 "editorial" consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

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RE: Coverage under Act – Workers

ITEM: AP1-1-5

BACKGROUND

1. Explanatory Notes

The POLICY in this Item sets out guidelines for determining who is a “worker” covered by Part 1 of the *Act* in certain specific situations.

2. The Act

See Item AP1-1-1.

POLICY

(a) General

Workers include individuals not employing other individuals and who fall into the following categories:

- individuals paid on an hourly, salaried or commission basis;
- individuals paid on commission or piecework where the work is performed in the employer’s shop, plant or premises;
- individuals paid commission, piecework or profit sharing where they are using equipment supplied by the employer;
- individuals operating under circumstances where the “lease” or “rental” of equipment or “purchase” of material from their employer is merely a device to arrive at a wage or commission amount; and
- labour contractors who elect not to be registered as independent operators.

A worker cannot be an “independent firm”.

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(b) Volunteers

Volunteers or other persons not receiving payment for their services are generally not workers.

Union delegates attending conferences, seminars, conventions or similar events are considered workers of the union if they receive a recorded payment for attending such functions, whether it be in the form of a wage or a per diem allowance.

A social service agency may operate a sheltered workshop to provide mentally or physically handicapped individuals with training or life enrichment opportunities in a workshop environment. Coverage applies only to the paid workers of the organization and paid instructors in the workshop, and not to the participants in the program, whether or not they receive a living allowance, incentive allowance, or nominal payment from the Provincial Government.

Volunteer firefighters or ambulance drivers and attendants employed by a municipality or other form of local government are given coverage by the definition of “worker” in section 1. This includes an individual at the scene of a fire who is requested by the Fire Chief or authorized delegate to assist and whose name is recorded. Only those individuals under the direction and control of the Fire Chief or authorized delegate are covered.

(c) Inmates

A prison inmate is considered a worker if he or she is involved in a work-release program and is permitted to work outside of the institution for regular wages, whether or not he or she is required to return daily to the institution. Similarly, a prison inmate who is conscripted to fight forest fires is considered a worker.

(d) Order-in-Council appointments

Order-in-Council appointments are generally to positions which operate autonomously and without the standard employer/worker relationship such as judges and the members of the Board of Directors of the Board. These persons are not workers and Personal Optional Protection is not available.

Some Order-in-Council appointments are for positions where there is a strong element of direction and control such as a secretary to a Provincial Government Minister. In these situations, the individual is considered a worker.

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(e) Forest firefighters

The Provincial Government has authority to conscript members of the public to fight forest fires. In the event of an injury, the conscripted member of the public is considered a worker of the Provincial Government under the “Fire Suppression Vote”.

When logging companies receive “cutting rights”, they are required to fight fires which occur on those properties. If a worker of the logging company sustains an injury while fighting a fire prior to the Provincial Government assuming control of the fire, he or she will be considered a worker of the logging company. Once the Provincial Government assumes control of the fire, all individuals engaged in fighting the fire become the responsibility of the Provincial Government.

(f) Lent employees

In determining whether a worker of one employer has become the seconded or lent employee of another employer, the question to be decided in each case is whether there is an employment relationship between the employee and the other employer for the purposes of the *Act*. The normal tests for determining whether an employment relationship exists are applied with the necessary modifications.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Independent Operators (AP1-1-6), Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Extending Application of the <i>Act</i> (AP1-3-1) and Coverage under Federal Statutes or Agreements Between the Provincial and Federal Governments (AP6-97-1) and, with regard to firefighters, Payroll – Principles for Determining (AP1-38-3) in the <i>Assessment Manual</i> and Coverage of Workers (policy item #5.00), Voluntary and Other Workers Who Receive No Pay (policy item #6.20), Specific Inclusions in Definition of Worker (policy item #7.00), Members of Fire Brigades (policy item #7.10), Volunteer Firefighters and

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HISTORY:

Ambulance Drivers and Attendants (policy item #67.32) in the *Rehabilitation Services & Claims Manual*, Volume II.
Replaces in part Policies No. 20:10:30, 20:30:20, 20:40:30 and 40:20:50 of the *Assessment Policy Manual* and Decisions No. 229 and 241 of volumes 1 - 6 of the *Workers' Compensation Reporter*.

APPLICATION:

This Item results from the 2002 "editorial" consolidation of all assessment policies into the *Assessment Manual*. The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.

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**RE: Coverage under Act –
Independent Operators**

ITEM: AP1-1-6

BACKGROUND

1. Explanatory Notes

The term “independent operator” is not defined in the *Act*. The criteria for determining whether a person is an independent operator are those used to determine whether a contract creates an employment relationship or a relationship between independent firms.

2. The Act

See Items AP1-1-1.

POLICY

The term “independent operator” is referred to in section 2(2) of the *Act* as being an individual “who is neither an employer nor a worker” and to whom the Board may direct that Part 1 applies as though the independent operator was a worker. An independent operator performs work under a contract, but has a business existence independent of the person or entity for whom that work is performed. An independent operator is an “independent firm” for purposes of Item AP1-1-2.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department’s Practice Directives available on the WCB website.

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – Types of Relationships (AP1-1-2), Coverage under <i>Act</i> – Distinguishing Between Employment Relationships and Relationships Between Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Labour Contractors (AP1-1-7), Personal Optional Protection (AP1-2-3) in the <i>Assessment Manual</i> .

**ATTACHMENT A.3
CURRENT ASSESSMENT MANUAL POLICIES**



ASSESSMENT MANUAL

HISTORY:

New policy.

APPLICATION:

This Item results from the 2002 “editorial” consolidation of all assessment policies into the *Assessment Manual*.

**ATTACHMENT A.3
CURRENT ASSESSMENT MANUAL POLICIES**



ASSESSMENT MANUAL

RE:	Coverage under Act – Labour Contractors	ITEM: AP1-1-7
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BACKGROUND

1. Explanatory Notes

For persons who are not covered by the normal criteria for “independent firms” set out in the POLICY in Item AP1-1-3, the Board uses a category called “labour contractors” in determining whether a person is a worker or independent firm under the *Act*. This policy sets out the guidelines for determining who is a labour contractor and the significance of that determination.

2. The Act

See Item AP1-1-1.

POLICY

Labour contractors may voluntarily choose to register as an employer (proprietorship or partnership) if they have workers or obtain Personal Optional Protection as an independent operator if they do not have workers. A labour contractor who takes one of these actions is an “independent firm” for purposes of Item AP1-1-3.

Labour contractors who choose not to register as an employer (if they have workers) or obtain Personal Optional Protection as an independent operator (if they do not have workers) are considered workers of the firm for whom they are contracting, and that firm is responsible for assessments. Any persons employed by the labour contractor to assist them are also considered workers of the firm with whom the labour contractor is contracting. A worker cannot be an “independent firm”.

If the labour contractor is registered, the proprietor or partner is not covered unless Personal Optional Protection is in effect.

Labour contractors include proprietors or partners who:

- have workers and supply labour only to one firm at a time;

ATTACHMENT A.3 CURRENT ASSESSMENT MANUAL POLICIES



ASSESSMENT MANUAL

- are not defined as workers, do not have workers, or do not supply major materials or major revenue-producing equipment but who contract a service to two or more firms on an ongoing simultaneous basis; or
- may or may not have workers but contract a service including one piece of major revenue-producing equipment to a firm or individual.

Persons who are normally labour contractors and who employ a worker are considered independent firms for any period of time that they are not contracting with another person or entity.

PRACTICE

For any relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WCB website.

See, in particular, Practice Directive "Labour Contractor Criteria" - AP1-1-7(A) - at http://www.worksafebc.com/law_and_policy/practice_directives/assessment_and_revenue_services/default.asp

EFFECTIVE DATE:	January 1, 2003
AUTHORITY:	ss. 1 and 2, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Coverage under <i>Act</i> – Terms (AP1-1-1), Coverage under <i>Act</i> – General Principles (AP1-1-2), Coverage under <i>Act</i> – Independent Firms (AP1-1-3), Coverage under <i>Act</i> – Employers (AP1-1-4), Coverage under <i>Act</i> – Workers (AP1-1-5), Coverage under <i>Act</i> – Independent Operators (AP1-1-6), and Personal Optional Protection (AP1-2-3) in the <i>Assessment Manual</i> .
HISTORY:	Replaces Policies No. 20:10:30 and 20:30:20 of the <i>Assessment Policy Manual</i> .
APPLICATION:	This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued