

CHAPTER 2

WORKERS AND EMPLOYERS COVERED BY THE ACT

#3.00 INTRODUCTION

Section 2(1) of the *Workers Compensation Act* states as follows:

"This Part applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the board. "

The employers and workers who are covered and those who are exempted are the subject of this chapter. Prior to January 1, 1994, coverage was limited to certain listed industries.

The Act does not apply to workers of the Federal Government of Canada. However, by Section 4(2) of the *Government Employees Compensation Act*, an "employee" who is usually employed in this province is given the same rights to compensation as workers under the provincial *Workers Compensation Act*. The persons considered "employees" are dealt with in this chapter.

#4.00 EXEMPTIONS AND EXCLUSIONS FROM COVERAGE

The criteria for the exemption of employers or workers may be found in the policy in Item AP1-2-1 of the *Assessment Manual* along with general exemptions which are described in detail. The policy in Item AP1-2-1 also recognizes that some workers and employers are excluded from coverage under the *Act* as a matter of constitutional law or because they have no attachment to B.C. industry.

EFFECTIVE DATE: February 11, 2003 (as to deletion of references to the former Governors)

APPLICATION: Not applicable.

#5.00 COVERAGE OF WORKERS

It is a well established principle of workers' compensation that where an employer comes within the scope of the Act, all workers of that employer are covered for compensation. The coverage is not limited to those engaged in the manual part of the operation. Thus, in a wholesale establishment, for example, workers' compensation coverage extends to clerical and bookkeeping staff, and to corporate presidents, as well as those engaged in the receiving, handling, storage and transmission of goods. All of these functions are part of wholesaling.

This position is not changed where an employer divides up the manual and clerical parts of his operation and attaches a separate corporate identity to each. Nor does it depend on whether the clerical and manual staff are employed by affiliated corporations. The result would be the same if there were no corporate affiliation.

A worker's claim is not prejudiced by the fact that the employer has not complied with the obligation to register with the Board. This is subject to the principles set out in Workers' Compensation Reporter Decision 335 and 20:30:30 of the Assessment Policy Manual.

#6.00 DEFINITIONS OF "WORKER" AND "EMPLOYER"

The basic definitions of "worker" and "employer" in Section 1 of the Act are as follows:

"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;".

Detailed discussions concerning the definitions of worker and employer may be found at 20:10:30 of the Assessment Policy Manual.

#6.10 Nature of Employment Relationship

Where a person contracts with another to provide labour in an industry covered by the *Workers Compensation Act*, the Board considers that the contract may create one of three types of relationship. The persons doing the work may be independent firms, labour contractors, or workers.

Very detailed registration rules concerning independent firms, labour contractors, and workers are outlined at 20:10:30 and 20:30:20 of the Assessment Policy Manual.

#6.20 Voluntary and Other Workers Who Receive No Pay

Usually a "worker" is paid. Therefore, it is not surprising that voluntary or other workers receiving no payment for their work are not generally considered workers under the Act. On the other hand, some workers of this type are expressly included within the

scope of the Act, and the Board is given express power to admit others at its discretion. Furthermore, the receipt of some sort of payment by such workers may lead to their being workers under the Act. Further information about volunteers can be found at 20:10:30 and 20:10:40 of the Assessment Policy Manual.

7.00 SPECIFIC INCLUSIONS IN DEFINITION OF WORKER

Section 1 includes within the Act's basic definition of "worker" certain classes of people who might otherwise not be covered. Those classes of people are discussed in detail in 20:10:30 of the Assessment Policy Manual.

7.10 Members of Fire Brigades

A volunteer member of a fire brigade is entitled to compensation for injuries arising out of and in the course of the activities of the fire brigade. This involves activities related to the process of firefighting even though not actually occurring while fighting a fire or during a drill or practice. It includes activities within the environs of the fire hall which are authorized and under the direction and control of the Fire Chief, such as activities involving maintenance to the building or equipment, snow clearance, etc. Coverage applies in the case of participation in practices, but not to travel to and from practices. However, there would be coverage in an actual emergency where the member is travelling to the firehall or the fire in response to the siren or returning home or to the member's regular job after the fire.

#8.00 ADMISSION OF WORKERS, EMPLOYERS, AND INDEPENDENT OPERATORS

The Act contains powers to admit workers, employers and independent operators.

A discussion of the situations where coverage may be extended under sections 2 and 3 of the Act is found at 20:10:40 and 20:50:00 of the Assessment Policy Manual.

#8.10 Federal Government Employees

The *Government Employees Compensation Act* grants "employees" of the Federal Government usually employed in the province the same rights to compensation as non-Federal employees. The definition of "employee" is given in Section 2 of this Act and takes the form of five alternative definitions which are as follows:

- "(a) any person in the service of Her Majesty who is paid a direct wage or salary by or on behalf of Her Majesty,

- (b) any member, officer or employee of any department, company, corporation, commission, board or agency established to perform a function or duty on behalf of the Government of Canada who is declared by the Minister with the approval of the Governor in Council to be an employee for the purposes of this Act,
- (c) any person who, for the purpose of obtaining employment in any department, company, corporation, commission, board or agency established to perform a function or duty on behalf of the Government of Canada, is taking a training course that is approved by the Minister for that person,
- (d) any person employed by any department, company, corporation, commission, board or agency established to perform a function or duty on behalf of the Government of Canada, who is on leave of absence without pay and, for the purpose of increasing his skills used in the performance of his duties, is taking a training course that is approved by the Minister for that purpose, and
- (e) any officer or employee of the Senate, the House of Commons or the Library of Parliament".

This definition is wide enough to cover most Federal employees, whether employed directly by the Government or by some statutory body. For example, it covers post office workers. The definition also includes certain persons taking training courses relating to their employment with the Government.

By Section 3(1) of the Act, members of the regular force of the Canadian Forces or of the Royal Canadian Mounted Police are excluded from coverage.

Any person appointed by authority of the Chief Electoral Officer and the *Canada Election Act* to prepare for and hold a Federal election is considered as an employee of the Federal Government for the purposes of the *Government Employees Compensation Act*. This definition includes Returning Officers, Election Clerks, Enumerators, Stenographers, Typists, Poll Clerks and a Constable.

Effective November 10, 1976, employees of the Bank of Canada are considered employees under the *Government Employees Compensation Act*.