

CHAPTER 2

WORKERS AND EMPLOYERS COVERED BY THE ACT

#3.00 INTRODUCTION

Section 2(1) of the *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.

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 *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 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 the policy in Item AP1-1-4 of the *Assessment Manual*.

EFFECTIVE DATE: March 18, 2003 (as to numerical reference to the policy in Item AP1-1-4 in the *Assessment Manual*)

APPLICATION: Not applicable.

#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 in the policies in Items AP1-1-1, AP1-1-4 and AP1-1-5 of the *Assessment Manual*.

EFFECTIVE DATE: March 18, 2003 (as to numerical references to the policies in Items AP1-1-1, AP1-1-4 and AP1-1-5 in the *Assessment Manual*)

APPLICATION: Not applicable.

#6.10 Nature of Employment Relationship

Where a person contracts with another to provide labour in an industry covered by the *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 in the policies in Items AP1-1-2, AP1-1-3, AP1-1-5 and AP1-1-7 of the *Assessment Manual*.

EFFECTIVE DATE: March 18, 2003 (as to numerical references to the policies in Items AP1-1-2, AP1-1-3, AP1-1-5 and AP1-1-7 in the *Assessment Manual*)

APPLICATION: Not applicable.

#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 in the policies in Items AP1-1-5 and AP1-3-1 of the *Assessment Manual*.

EFFECTIVE DATE: March 18, 2003 (as to numerical references to the policies in Items AP1-1-5 and AP1-3-1 in the *Assessment Manual*)

APPLICATION: Not applicable.

#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 the policies in Items AP1-1-1, AP1-1-3, AP1-1-5, AP1-1-7 and AP1-97-1 of the *Assessment Manual*.

EFFECTIVE DATE: March 18, 2003 (as to numerical references to the policies in Items AP1-1-1, AP1-1-3, AP1-1-5, AP1-1-7 and AP1-97-1 in the *Assessment Manual*)

APPLICATION: Not applicable.

#7.10 Coverage for Volunteer Firefighters

Individuals volunteering as a firefighter for a municipality or other form of local government are given coverage by the definition of "worker" under section 1 of the *Act*.

A volunteer firefighter may also include an individual at the scene of a fire, who is requested to assist by the Fire Chief, or authorized designate, and whose name is recorded. Only those individuals under the direction and control of the Fire Chief or authorized designate are covered.

A volunteer firefighter may be entitled to compensation for injuries or death arising out of and in the course of the activities of the fire department.

A. Travel

Volunteer firefighters are not covered for injuries or death which occurs while routinely commuting to and from the fire department.

A volunteer firefighter's travel may be considered part of his or her activities of the fire department when:

- in response to an emergency call out, the volunteer firefighter is directed by the Fire Chief or authorized designate, to travel to the fire hall, a fire or other site of emergency; and
- while returning to the volunteer's home or regular job after attending to the emergency duties, via the most direct route without departure for personal reasons.

If the volunteer firefighter's injury or death results primarily from the activity associated with the urgency of the preparation for travel, it may be considered to arise out of and in the course of the activities of the fire department, and therefore be compensable. This is an exception to the general rule that workers who are employed to travel are considered to be in the course of the employment only from the time the worker commences travel on the public roadway.

B. Emergency Response Duties

In addition to fighting fires, a volunteer firefighter's duties may also include responding to various emergency situations such as:

- facilitating evacuations;
- performing rescues;
- controlling hazardous substances;
- providing traffic control;
- disaster planning/response; and
- other related duties assigned by the Fire Chief or designate.

C. Participation in Practices and Drills

An injury or death that occurs during a volunteer firefighter's participation in practices or drills may be considered to arise out of and in the course of the activities of the fire department, if participation was undertaken at the direction of the Fire Chief or authorized designate, regardless of whether the practice or drill takes place at the fire hall or some off-site location.

Practices include training sessions that involve the teaching of vocational or practical skills specifically related to those used within the fire department, such as live firefighter training.

D. Other Employment Activities

i. Maintenance Duties

An injury or death that occurs during a volunteer firefighter's maintenance of the building or equipment within the environs of the fire hall may be considered to arise out of and in the course of the activities of the fire department, where the volunteer firefighter is authorized and under the direct supervision and control of the Fire Chief or authorized designate.

ii. Public Relations Activities

An injury or death that occurs during a volunteer firefighter's participation in public relations activities may be considered to arise out of and in the course of the activities of the fire department.

Public relations activities may include participation in recruitment, charity drives and safety education.

Factors that may weigh in favour of coverage for injuries or death that occur during a volunteer firefighter's participation in public relations activities, include whether the participation:

- is for the benefit of the fire department;
- was undertaken at the direction of the Fire Chief or authorized designate;
- involved using equipment supplied by the fire department;
- was during a time when the fire department was operational; or
- was considered to be part of the volunteer firefighter's duties.

No single factor is determinative. The more tenuous the connection to the activities of the fire department, the less these factors favour coverage.

EFFECTIVE DATE: October 1, 2007

CROSS-REFERENCE: Policy items #14.00, *Arising Out of and in the Course of Employment*; #18.00, *Travelling To and From Work*; #20.00, *Extra-Employment Activities*; #20.20, *Recreational, Exercise or Sports Activities*; #20.30, *Education or Training Courses* and #20.50, *Fund Raising, Charitable or Other Similar Activities*

APPLICATION: Applies to all injuries on or after October 1, 2007.

#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 in the policies in Items AP1-1-6, AP1-2-2, AP1-2-3 and AP1-3-1 of the *Assessment Manual*.

EFFECTIVE DATE: March 18, 2003 (as to numerical references to the policies in Items AP1-1-6, AP1-2-2, AP1-2-3 and AP1-3-1 in the *Assessment Manual*)

APPLICATION: Not applicable.

#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.

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*.