



WORKING TO MAKE A DIFFERENCE

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Update 2008 – 2

TO: HOLDERS OF THE ASSESSMENT MANUAL

This update to the *Assessment Manual* contains amendments to the *Manual* implemented since Update 2008– 1.

Amendments to the following are **effective January 1, 2008**:

- AP1-1-1, *Coverage under Act – Descriptions of Terms*
- AP1-1-4, *Coverage under Act – Employers*

A summary of the amendments is attached and the amended pages are included as part of this package.

If you have any questions regarding subscription information for updates to the *Assessment Manual*, please contact WorkSafeBC Customer Service at the following:

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Roberta Ellis
Vice President
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Attachments

ASSESSMENT MANUAL

SUMMARY OF AMENDMENTS – Update 2008 – 2

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|--|-------------|---|
| AP1-1-1 <i>Coverage under Act – Descriptions of Terms</i> | Pages 1 – 4 | Amendment regarding Compensation of Principals |
| AP1-1-4 <i>Coverage under Act – Employers</i> | Pages 1 – 4 | Amendment regarding Compensation of Principals |

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

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) 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 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.

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 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.
- *Principal* – A principal is a person who has the direct or indirect power or ability to control or influence the operations of a corporation or similar entity, through the ownership of voting securities, by contract, or otherwise. An officer, director or shareholder active in the operation of

a corporation or similar entity is presumed to be a principal of that firm. However, the Board may find that such a person is not a principal where it is shown that the person does not possess direct or indirect power or ability to control or influence the firm's operations.

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 WorkSafeBC website.

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| EFFECTIVE DATE: | January 1, 2008 |
| 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), <i>Principals – Composition of Earnings</i> (policy item #68.90) in the <i>Rehabilitation Services & Claims Manual</i> , Volume II. |
| HISTORY: | This Item results from the 2002 “editorial” consolidation of all assessment policies into the <i>Assessment Manual</i> . |
| APPLICATION: | This policy is effective January 1, 2008. |

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.

(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.

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, including the circumstances as described above.

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.

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 WorkSafeBC website.

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| EFFECTIVE DATE: | January 1, 2008 |
| 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> . |
| HISTORY: | 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. 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 <i>Assessment Policy Manual</i> and Decisions No. 138, 229, 255 and 335 of volumes 1 - 6 of the <i>Workers’ Compensation Reporter</i> . |
| APPLICATION: | This policy is effective January 1, 2008. |