

BEST PRACTICES INFORMATION SHEET #4

TOPIC: Personal Service Corporations
ISSUE DATE: March 18, 2005

Objective

This information sheet highlights the key considerations when determining the average earnings of a worker operating as a “Personal Service Corporation”.

Law & Policy

Part 1 of the *Workers Compensation Act* (the “*Act*”) establishes compensation coverage for workers and the corresponding assessment obligation of employers. In particular, section 2(1) in Part 1 of the *Act* provides that the workers’ compensation system has ‘universal coverage’ 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.

Despite the language in section 2(1), Part 1 of the *Act* does not automatically cover all people who work or hire others to do work in BC. One of the primary exceptions is “independent operators” who must purchase Personal Optional Protection in order to be covered.

It can be very difficult to distinguish between a “worker” and an “independent operator”, especially with the changing nature of the workforce and the many different types of employment relationships. To assist in this matter, policy items AP1-1-1 to AP1-1-7 of the *Assessment Manual* provide criteria for determining the “status” of persons for workers’ compensation purposes. The “status” of a person determines his/her rights and obligations under the *Act*.

In policy, at item AP1-1-3 of the *Assessment Manual*, the term “Personal Service Corporation” (“PSC”) is defined to identify those incorporated companies that should not be considered independent. A person operating as a PSC is to be considered a worker. The employer of this worker is the person or firm that enters into a contract of service with the PSC.

Adjudicative Guidelines

A) Status Determination

Not everyone who considers himself/herself self-employed will meet the definition of “employer” or “independent operator” under the *Act*. The WCB may determine

that a person is working under an express or implied contract of service and is properly classified as a “worker” within the compulsory scope of the *Act*.

A PSC is defined in policy as a firm where no worker other than a principal active shareholder is employed, and if the firm had not been incorporated, the principal active shareholder would clearly be a worker. A person operating as a PSC cannot register with the WCB as an employer and cannot purchase Personal Optional Protection. This individual has the “status” of a worker for coverage and adjudicative purposes.

An example of a PSC can often be found in the film industry:

A set carpenter incorporates himself for tax purposes (Bob Smith Inc.) and works for a film production company under a contract of service. The act of incorporation by the worker does not change the employment relationship. The employer (film production company) continues to pay assessments to the WCB based on the remuneration it pays to the worker through the PSC (Bob Smith Inc.).

The determination that a person operating as a PSC is a worker, should, subject to reconsideration and review provisions, be carried through the life of a claim. It is inappropriate to use the average earnings policies applicable to “labour contractors” or “principals” to calculate the worker’s wage rate. The definition provided in policy item AP1-1-3 of the *Assessment Manual* means that a worker operating as a PSC cannot at the same time be considered a labour contractor or a principal.

B) Average Earnings

The fact that a worker has established a PSC does not, on its own, determine how the worker should be ‘categorized’ for the purpose of calculating average earnings. As would be the case for any worker, a worker operating as a PSC may have a short-term/sporadic attachment to employment or may have established a longer-term/stable attachment to employment. As a result, Policy item #67.10, *Casual Workers*, of the *Rehabilitation Services and Claims Manual*, Volume 2 (“RSCM”) should be applied to determine if the general rule for determining average earnings is applicable or the casual worker exception.

In calculating a worker’s average earnings, the focus is on the gross earnings from employment only. It is recognized that a worker’s employment earnings are normally composed of wages or salary. However, a worker may receive other types of payments that, depending upon their nature, may not be appropriate for inclusion in determining average earnings.

If the earnings information reveals that a portion of the remuneration paid by the employer/prime contractor is in respect of special work-related expenses or allowances, then section 33(3.1)(b) of the *Act* and Policy item #68.23, *Special Expenses and Allowances*, of the *RSCM* should be applied so as not to include these amounts in the average earnings calculation.

Generally, it will be appropriate to calculate the worker's wage rate based on the earnings reported by the employer/prime contractor (i.e., the remuneration paid to the PSC). The PSC is not considered to be the employer. As a result, the "draw" taken by the worker from the PSC and reported for tax purposes should not be used to set the wage rate.

Should tax information provided by the worker identify depreciation on major revenue-generating equipment and/or operating costs and expenses that suggest the person should not have been classified as a worker, the matter should be referred to the Assessment Department for confirmation of the person's status.

CROSS REFERENCES:	Practice Directive #25, <i>Coverage and Compensation for Self-employed Persons</i> Practice Directive #33A, <i>Initial and Long-Term Average Earnings</i> Practice Directive #33B, <i>Casual Workers</i>
HISTORY:	New item intended to clarify existing corporate practice
APPLICATION:	N/A