

Extending application of the Act

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OBJECTIVE

1. This practice directive explains how the Assessment Department administers section 3 of the *Workers Compensation Act* and aids in the interpretation of *Assessment Manual Item: AP1-3-1*.

INTERPRETATIVE GUIDELINES

2. The statutory definition of “worker” in section 1 of the *Act* includes subparagraph (g) “a person deemed by the Board to be a worker under section 3(6).”
3. Section 3 of the *Act* grants the Board authority to extend the application of Part 1 of the *Act* to persons who would not normally fall within the *Act’s* scope. The extension of Part 1 of the *Act* results in the following:
 - (a) An individual deemed to be a worker and his or her dependant is statute-barred from advancing or maintaining a cause of action or right of recovery against an employer within the scope of Part 1 of the *Act* or against any worker in respect of personal injury, disablement, or death arising out of and in the course of actual or notional employment;
 - (b) An individual deemed to be a worker must:
 - comply with the provisions of the *Act*, regulations made thereunder, published Board policy, and any practice directive made thereunder, and
 - comply with all obligations of a worker applying for and receiving benefits under Part 1 of the *Act*.
 - (c) The employer or notional employer must comply with the provisions of the *Act*, regulations made thereunder, published Board policy, and any practice directive made thereunder.

(d) The employer or notional employer is subject to occupational health and safety obligations under Part 3 of the *Act* and may be subject to administrative penalty per *Prevention Manual item D24-2-1*.

4. Admission under section 3 may be made at the time, in the manner, subject to the terms and conditions, and for the period the Board considers adequate and proper.

ADJUDICATIVE GUIDELINES

I SECTION 3(5) – AN UNDERTAKING IN THE PUBLIC INTEREST

5. Section 3(5) of the *Act* grants the Board discretion to extend the application of Part 1 of the *Act* on the terms and conditions directed by the Board to an individual or group of individuals engaged in an activity the Board thinks is in the public interest.

A Section 3(5)(a) – Volunteer fire brigades

6. Section 3(5)(a) is circumscribed in scope and historically has only been extended to members of volunteer fire brigades. If an application is accepted, the applicant is deemed an employer under the *Act* and its qualifying volunteer firefighters are workers of the applicant.

(1) Terms and conditions

1. The applicant organization must operate under a registered British Columbia society or association name.
2. The applicant organization must provide firefighting services to unorganized territories.
3. The firefighters must be volunteers.
4. The applicant organization must maintain a roster containing the names of all volunteer firefighters.
5. Coverage is for volunteer firefighters only while under the direction and control of a fire chief or a delegate.
6. The applicant organization must agree to comply with all Board regulations and to pay assessments.

B Section 3(5)(b)

7. Section 3(5)(b) is circumscribed in scope and historically has only been extended to undertakings which affect a broad segment of the public. If an application is approved by the Lieutenant-Governor-in-Council, the qualifying volunteers become workers of the provincial government.

(1) Criteria

In determining whether to extend such coverage, the following criteria are considered:

1. The organization is a legally constituted, non-profit organization.
2. The organization's services are related directly to the protection of life, health, or safety.
3. There is an identifiable need for the organization's services.
4. The organization's services are available to a broad spectrum of the public as opposed to a particular interest group.
5. The organization is the only organization providing the services.
6. The services provided fall within the responsibility or mandate of the provincial government.
7. The services have been requested, or in some way initiated, by the provincial government.
8. The organization receives funding or other types of support from the provincial government or any other government.
9. It is feasible or practical for the provincial government to exercise the supervisory controls required to assess the organization's operating procedures and the validity of claims.
10. The organization can be attached to a particular Ministry and therefore be eligible for workers' compensation or other disability or liability coverage under that Ministry.
11. The organization is eligible for coverage under the provincial government's insurance policy for volunteers.
12. The organization is associated with, or provides services to, a commercial venture which might otherwise be required to provide coverage.

II SECTION 3(6) – VOCATIONAL OR TRAINING PROGRAMS

8. At the request of an authorized Minister, the Board may deem an individual or class of individuals enrolled in an approved vocational or training program at an approved location to be workers of the Province, and compensation is then payable out of the accident fund for injuries arising out of and in the course of the training program.

III SECTION 3(7) – WORK STUDY PROGRAMS

9. The Board, on the application of an employer or program organizer, may admit an individual or group of individuals engaged in a work study program or other program of self-improvement involving work to be workers within the scope of the *Act*, whether or not the individual or group receives payment for the work. Once this coverage has been accepted, the Board may levy assessments on the employer or program organizer by a formula determined by the Board.

10. The Board may also, with the approval of the Lieutenant-Governor-in-Council, deem an individual or group of individuals engaged in a work study program to be workers of the Province, on terms and conditions determined by the Board.

(1) Terms and Conditions

1. Section 3(7) coverage is not available for or applicable to an individual who is otherwise a worker under the *Act*.
2. Section 3(7) coverage is only granted for and is limited to work undertaken in a standard workplace environment in the community and within British Columbia. Specifically, such coverage does not extend or apply to any instruction, training, or work undertaken in a classroom or in a workplace setting established for the purpose of the program.
3. Section 3(7) coverage is limited to injuries or diseases arising out of and in the course of employment in such a standard workplace.
4. A claim for compensation shall be adjudged by the Board in the usual manner but may be subject to any policy, directive, or ruling which the Board may in its sole discretion apply to such a claim, from time to time.
5. Section 3(7) coverage is applied to all of the employer or program organizer's applicable programs, unless otherwise stated by the Board.
6. The employer or program organizer will be assessed on a monthly basis as follows:
 - (a) The firm's net assessment rate multiplied by the payroll attributable to the participants in each program; or
 - (b) If there is no payroll or the amount cannot be determined: the firm's net assessment rate multiplied by the greater of
 - \$500, or
 - \$100 per participant in each program.
7. Unless section 3(7) coverage is granted to a date-certain, once accepted, coverage remains continuously in effect until it is cancelled in writing by either the Board or the employer or program organizer.
8. If a program organizer or employer is from out of province, coverage will not be available for the individuals or group engaged in a work study program with that program organizer to work with a "host" employer in British Columbia.