

Exemptions from coverage

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OBJECTIVE

1. This practice directive provides direction on the exercise and administration of the Board’s authority under section 2(1) of the *Workers Compensation Act* to exempt an employer or worker from Part 1 of the *Act* and aids in the interpretation of *Assessment Manual Items: API-2-1* and *API-1-4(f)*.

INTERPRETATIVE GUIDELINES

2. Section 2(1) of the *Act* directs that Part 1 of the *Act* “applies to all employers ... in British Columbia except employers or workers exempted by order of the Board.”
3. Thus, the *Act* creates a mandatory statutory scheme, under which an employer must register with the Board immediately upon becoming an employer in British Columbia, unless exempted by order of the Board.
4. *Assessment Manual Item: API-84-1* directs that the “Board of Directors will exercise the following powers and responsibilities: ... granting exemptions from the application of Part 1 under section 2(1)”. The Board of Directors exercises its authority through *API-2-1*.
5. *API-2-1* outlines the principles which are followed when deciding whether a general exemption order will be made under section 2(1) of the *Act*.¹ These principles include the following: that section 2(1) creates a scheme of universal coverage, with exemptions being granted for exceptional industries or occupations whose circumstances did not fit the purpose and intent of the *Act*; that exemption orders will

¹ The initial policy decision by the former board of governors concerning the use of its exemption authority under section 2(1) of the *Act* was contained in *Decision of the Governors Number 60, “Exemption from Coverage Under Part One of the Workers Compensation Act,”* 7 February 1994, 10 W.C.R. 167. The general principles set out in that decision are integrated into *API-2-1*.

only be made in respect of industrial or occupational groups; and that the principles of good public administration should be applied.

6. As an exemption from registration is an exceptional exercise of authority, it requires strict compliance with the general principles underlying exemption and the condition or conditions precedent of the specific exemption.

I EFFECT OF EXEMPTION

7. As Part 1 of the *Act* does not apply to an exempted employer, an exempted employer is not obliged to be registered with the Board, to report its assessable payroll, or to remit the amount of the assessment. Conversely, an exempted employer does not receive the benefit of section 10's bar to suit. Therefore, an injured worker has a right of action – a law suit – against an exempted employer.
8. The employees of an exempted employer are workers under the *Act* but are exempted from application of Part 1 of the *Act*. Therefore, any such employee is not afforded the protections of Part 1 of the *Act*, including compensation to replace lost wages, the rehabilitation necessary for timely return to work, and the protection of the bar to suit. However, any such employee is not barred by section 10 of the *Act* from suing his or her employer, any other employer in British Columbia (whether registered with the Board or not), or any other worker.

II PART 3 OF THE ACT

9. Unless required as a matter of constitutional law, an exempted employer or worker is not exempt from the occupational health and safety provisions in Part 3 of the *Act*.

ADJUDICATIVE GUIDELINES

I “AN INDIVIDUAL EMPLOYED BY THE OWNER OR OCCUPIER IN OR AROUND A PRIVATE RESIDENCE ...”

10. An individual engaged by the owner or occupier of a private residence in such circumstances is a worker under the *Act* but is exempted from application of Part 1 of the *Act*. The owner or occupier of the private residence who retains the service of that individual is exempt from registration and the application of Part 1 of the *Act vis-à-vis* that individual.
11. The term “24 working hours” in *API-2-1(b)(1)(ii)* qualifies the term “specific job or jobs” and therefore refers to 24 hours of work regardless of the number of individuals who undertake the work.

II “SPOUSES INVOLVED IN AN UNINCORPORATED BUSINESS ...”

12. *Appendix B – Businesses Operated by Spouses of Decision No. 60* provided the following explanation for the general exemption order:

The family connection may make it difficult to tell whether any contract exists at all and, if there is a contract, whether it is akin to a partnership or one of employment. There may therefore be a lack of predictability as to whether a business is required to register or whether the earnings of a spouse or child should be included in payroll.

13. A spouse of a proprietor is excluded from coverage, but the spouse (or the proprietor on the spouse’s behalf) may apply for Voluntary Spousal Coverage under *Assessment Manual Item: AP1-2-2*.

III “EMPLOYERS WITH NO PLACE OF BUSINESS IN THE PROVINCE”

14. An employer

- with no place of business in British Columbia,
- which temporarily carries on business in the province,
- but does not employ a British Columbia resident,
- which has workers’ compensation system coverage in another jurisdiction that provides compensation for occupational injuries and diseases, and
- which meets the additional criteria set out in *AP1-2-1(3)*,

is exempt from registering under Part 1 of the *Act*.

15. Generally a “place of business” is an establishment (a premise, facility, installation, etc.) where business is conducted, goods are made or stored or processed, or where services are rendered. For the purpose of *AP1-2-1(3)* a place of business does not include an establishment used to temporarily carry on business in British Columbia.

IV “PROFESSIONAL SPORTS COMPETITORS OR ATHLETES”

16. In *AP1-2-1(b)(4)*, the Board of Directors exercised its authority under section 2(1) of the *Act* and *AP1-84-1* to exempt specific workers – being professional sports competitors or athletes – from the application of Part 1 of the *Act*. Thus, an individual athlete must first be adjudged to be a worker under the *Act* before this exception may be considered.

17. The conditions precedent to the exemption for professional sports competitors and athletes are best appreciated through consideration and application of *Appendix D – Professional Sports Competitors of Decision No. 60*. In the main, a professional sports competitor or an athlete must be competing in a sport entailing each of the following:

- physical activity;
- the existence of rules governing how the sport is played; and
- competition, whether among teams or individuals.

18. This exemption does not apply to non-competing workers of a sports team such as coaches, management, trainers, or other support staff.

V “PERSONAL FINANCIAL HOLDING COMPANY”

19. A “personal financial holding company”² is not equivalent to a “holding company”. The former is a corporation which undertakes the activities stipulated in policy for its shareholders, while the latter is a corporation that has no function other than to own the shares in one or more other corporations.

VI “EXCLUSION FROM COVERAGE UNDER CONSTITUTIONAL LAW”

A Consulates and trade delegations

20. A foreign consulate is not obligated in law to observe the requirements imposed under Division 4 of Part 1 of the *Act*. However, a foreign consulate can voluntarily register with the Board and provide coverage for its workers in British Columbia (which would not include the nationals of the foreign government).

21. For these purposes, a “trade delegation” is “any delegation or trip that promotes any type of trade”³ for a sovereign state.

B “sufficient connection”

22. In *British Airways v. W.C.B.*,⁴ the court set forth the following “sufficient presence test” in relation to non-resident flight crews flying into British Columbia:

“In order to give the province jurisdiction to secure the civil rights of a person related to his employment there must be a sufficient connection between the person’s employment and the province.”

23. The court found that the British Airways flight crew did not have a “sufficient connection” to British Columbia for the following reasons: their presence in the province was only “transitory”, their individual residences and usual places of employment were the United Kingdom, and the employment contracts and payments thereunder were made in the United Kingdom.

² *Decision of the Panel of Administrators – Exemption of Personal Financial Holding Companies*, 15 May 1996, 13 W.C.R. 509.

³ British Columbia’s Ministry of Technology, Trade and Economic Development, 28 November 2008.

⁴ *British Airways v. W.C.B.* (1985) 17 D.L.R. (4th) 36 (B.C.C.A.).

24. As well, the court reasoned from a number of constitutional decisions – wherein the issue was whether certain legislation was a federal responsibility under section 91 or a provincial responsibility under section 92 of the *Constitution Act, 1867* – and determined that the flight crew’s place of employment was not the province, but rather an aircraft temporarily in the province.
25. As each of the “sufficient presence test” and the constitutional principle in *British Airways* is applicable to the case of foreign-registered vessels transiting British Columbia waters, an individual working on such a vessel is generally not within the Board’s jurisdiction.