

Practice Directive 1-1-3 (C)

Foster Parents

Effective October 1, 2003

Reference *Workers Compensation Act* (the “Act”) section 1, in part:

“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;

Reference *Assessment Policy* 1-1-6:

The term “independent operator” 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” for purposes of Item AP1-1-2.

PRACTICE

When determining whether there is a relationship of employment or independence major consideration is given to the degree of independence between the participating parties. In the case of foster parents, there are two main circumstances to consider:

1. Family Care Homes

Homes provided by foster families for children whose own families cannot look after them are “family care homes”. They are funded and approved through a Provincial Ministry that conducts a home assessment prior to approval and contract agreement with the foster parent(s). The primary foster parent may also work outside the home as long as the child’s needs are met according the type of care specified in the contract between the Ministry and the foster parent.

Although the Ministry sets standards concerning the qualifications and training of foster parents and have personnel who visit the foster home from time-to-time, the Ministry has little control over the day-to-day management of the foster home operations. Foster parents are also required to provide real property, equipment and materials necessary to provide care in a home.

The WCB does not generally consider foster parents to be workers under the *Act*.¹ These individuals are considered independent since they provide a facility and pay all expenses. While they are provided payments for their facility and expenses, the allotment of such funds is under the control of the foster parent. As such, they may apply for optional protection as independent operators under section 2(2) of the *Act*.

However, if the Ministry owns or rents the facility, pays the expenses and hires individuals to run the facility, such individuals will be considered workers of the Ministry.

2. Agency Care

Agency care arrangements are different from that of the Ministry-foster family arrangements. Generally, the agency contracts to provide a range of services to the Ministry, one of which may be providing foster care. In those cases, the agency selects their own foster parents and utilizes its own fee schedules. The Ministry has no control over the foster homes and the agency provides all the support to the foster parents.

The agency usually provides a monthly amount to cover rent/mortgage payments and food for the foster child. Any additional expenses such as clothing, medical, dental, bedding, furniture, etc. are supplied by the agency. The agency must approve any relief workers and foster parents may not be permitted to carry on any other type of employment outside the home. In this situation the foster parent would likely be considered a worker of the agency.

However, each contract would have to be reviewed and the tests for independence applied. The tests for independence include, but are not limited to, evaluating:

- (a) Control
- (b) Ownership of Equipment or Licences
- (c) Terms of Work Contract
- (d) Independent Initiative, Profit Sharing, and Piecework
- (e) Employment of Others
- (f) Continuity of Work
- (g) Separate Business Enterprise

In either of the cases outlined above, the WCB must use discretion in determining and weighing the relevant factors to decide whether the relationship is one of employment or independence. If it is determined that the foster parents do not meet the test of independence, they are considered workers.

¹ The WCB takes the position that money paid from the Ministry to foster parents who provide care in their own home is not considered earnings. Under the *Income Tax Act* such monies are considered allowances.