

Workplace Safety and Insurance Board (WSIB) - Mandatory Coverage in the Construction Industry (Bill 119)

Summary:

Starting January 1, 2013 you need to pay WSIB premiums on your earnings if:

- You work in a construction-related industry (see below); and
- You are:
 - an executive officer in a corporation;
 - a partner in a partnership;
 - a sole proprietor; or
 - an independent operator (a corporation or sole proprietor without employees).

If you are already registered with WSIB and pay premiums for your employees, you will now add your earnings into the premium calculation and remit at the same rate as you pay for your employees.

If you are not registered with WSIB, you now must register and pay a premium based on your earnings and the area of construction you work in.

Exemptions:

There are two types of exemptions:

- You work exclusively in home renovation and directly for a homeowner (not through another contractor). [N.B. If you have employees, they still must be covered.]
- You are an executive officer or partner who only makes periodic site visits; you don't "swing a hammer" or supervise the workers because there are other partners, officers or employees who do that (only one person can be exempted per firm)

Definition: Construction-Related Industry:

WSIB has subdivided its Rate Groups into Classes. If your Rate Group starts with a 7, it falls into Class G: Construction

- 704: Electrical and Incidental Construction Services
- 707: Mechanical and Sheet Metal Work
- 711: Roadbuilding and Excavating
- 719: Inside Finishing
- 723: Industrial, Commercial, and Institutional Construction
- 728: Roofing
- 732: Heavy Civil Construction
- 737: Millwrighting and Welding
- 741: Masonry
- 748: Form Work and Demolition
- 751: Siding and Outside Finishing
- 764: Homebuilding

Flowchart:

1. **Structure of your business:**
 - a. Corporation - go to 2
 - b. Partnership - go to 2
 - c. Sole proprietor - go to 5
 - d. Independent operator - go to 6

2. **Corporation or Partnership:** Do all executive officers or partners go on site and physically do the construction-related activities?
 - a. Yes - go to 7;
 - b. No - go to 3

3. **Officer/partner Exemption:** Apply for exemption for the one partner or officer who rarely goes on the job site using Form 1208WA. Only one person can be exempt. Is there another partner or officer who doesn't go on job sites?
 - a. Yes - go to 4
 - b. No - go to 7 if you don't have any employees or 8 if you do have employees

4. **Non-Exempt Officers/Partners:** For any other partners or officers who don't go on job sites (except for an occasional visit), apply for a special rate group #755 using Form 1209WA. You only pay \$0.21 per \$100 for these senior people. Do you have employees you pay WSIB on?
 - a. Yes - go to 8
 - b. No - you do now...you will have to register and pay WSIB on all other (active) officers and partners, go to 7

5. **Sole Proprietors:** Do you have employees?
 - a. Yes - go to 8
 - b. No - you are an independent operator, go to 6

6. **Independent Operators:** Historically either your WSIB premiums were covered by the contractor you worked under or you produced a Declaration of Exemption due to being an Independent Operator. Now you will register and pay your WSIB premiums yourself before WSIB will issue a clearance certificate. Did you work as an independent operator in 2012?
 - a. Yes - go to 7 (register) and remit all 2013 premiums by January 1, 2013 based on your 2012 net earnings
 - b. No - go to 7 (register) if you are just starting to work as a contractor in 2013. You must estimate your 2013 earnings and remit all 2013 premiums when you register in order to obtain a clearance certificate.

Be aware that if you only work for one contractor for 18 months, WSIB may question your independence and determine that you are an employee of the contractor. CRA may also be notified of their decision.

7. **Registration:** Lucky you. You have to either call WSIB or go online to <http://bit.ly/StWdVY> and pre-register. To ensure you are able to work for a principal contractor, you must do this before January 1, 2013. Otherwise you may not have the clearance certificate required to report to work.

If you fall into one of these categories after January 1, 2013 you must register with the WSIB within ten days.

Go to 8.

8. Remittance of Premiums on your Earnings:

- a. Sole Proprietors and Partners: Insurable earnings are the amount of Net Income from Business Activities declared on your Personal Tax Return. Estimate your annual insurable earnings for the current year and add approximately $\frac{1}{4}$ of that to your employees' earnings when you calculate your quarterly remittance. Adjust each quarter as required and finalize in the remittance for the last quarter of the year.
- b. Executive Officers in a Corporation: Insurable earnings include all income received from the corporation - not just T4's amounts, but dividends, director fees, and taxable benefits.
- c. Nasty fact: There is a minimum amount of insurable earnings. If you made less than \$27,733 in 2012 (or estimate you will in 2013) you will have to provide evidence that the lower amount is more accurate; otherwise you will have to remit based on that minimum!
- d. Another Nasty Fact: "Before a clearance is issued for a newly registered contractor, the contractor must make an advance payment for the amount determined by WSIB." Whatever that means...
- e. Maximum insurable earnings: Most people will not have to worry about this, but after \$83,200 in earnings you don't have to remit premiums.

Merits:

A principal (the contractor who hires a subcontractor) can no longer be found liable for the premiums of an independent operator as long as that independent operator has more than one client.

If injured on the job, the coverage provided by WSIB could mean the difference between financial comfort and going on welfare for construction company owners who never arranged private insurance or optional WSIB coverage.

Minuses:

If the reported insurable earnings differ from the verified amount of actual earnings, the WSIB will adjust the reported amount of insurable earnings accordingly (increase or decrease) for premium accuracy; however if you have overpaid and run into cashflow issues as a result, their refund may come too late!



If you are currently exempt as a home renovator, you will lose that exemption on all earnings as soon as you or your partners take on a contract that is not direct with a homeowner.

The penalties for not complying with these changes are severe. For an individual, fines are a maximum of \$25,000 and/or 6 months in jail. For a corporation, fines are a maximum of \$100,000.

Strategies:

If you are a sole proprietor who does not actively work in your business for health reasons, there is a chance you can still apply for exemption despite the information presented above, according to a WSIB representative I spoke to. If this does not work, consider incorporating and completing the Declaration for Exemption from Compulsory Coverage form. Although, for \$0.21/\$100 you might consider using the new rate group and have some coverage just in case!

WSIB does not cover injuries sustained on personal time so you should still have private third-party coverage for long-term disability. Be sure to shop around and negotiate hard - now that the chance of you actually needing the benefits of disability insurance have been reduced dramatically, the premiums should drop dramatically as well.

Hiring Contractors:

For the rest of us business owners, there is one very important detail to be covered if we need to hire a contractor to do some construction-related work around our office - get a clearance certificate from WSIB! Otherwise we will be liable for their premiums.

Prepared by:

Gwyneth H. James MBA CPA, CGA
Senior Partner