

So you're thinking of using independent operators in your construction business...



Here's
what you
MUST
know

WSIB
ONTARIO
CSPAAT

Workplace Safety &
Insurance Board

Commission de la sécurité
professionnelle et de l'assurance
contre les accidents du travail

Here's what you MUST know

Hiring subcontractors and/or owner-operators is a common practice in the construction industry. While at first glance the advantages of hiring a subcontractor or owner-operator may be appealing, the reality is there are many financial repercussions which could significantly impact your business.

A subcontractor or owner-operator may be a worker or an independent operator for WSIB purposes. Workers are automatically covered in the construction industry and the principal is required to pay premiums for this coverage. On the other hand, WSIB coverage for independent operators is not mandatory.

Here are some things you should know before you hire an independent operator.

What is an independent operator?

An independent operator is different from a regular employee or worker. An independent operator carries on a business, separate from the employer. Typically, an independent operator in the construction industry will have the following characteristics. The individual:

- offers services to various firms
- reports to the government as a self-employed business (Canada Revenue Agency/GST)
- owns and operates his/her equipment.

The WSIB uses an organizational test to determine if a subcontractor is an independent operator or a worker.

What is the organizational test?

The WSIB's organizational test uses specific criteria to determine if a person is an independent operator or a worker, for WSIB purposes. The key to remember is that the test is a complete examination of the work relationship between an individual and the firm who uses his/her services. Sample questions used in the WSIB's organizational test include:

- Does the person own, operate and maintain his/her equipment?
- What control and supervision are exercised over the work performed?

- Does the person work for various companies?
- Are the work activities governed by a collective agreement?
- Does the person file GST returns to Canada Revenue Agency?

What are an employer's obligations and responsibilities when using independent operators?

Both parties (the individual offering services and the firm thinking of hiring the person) are strongly encouraged to complete the organizational test prior to beginning a work relationship so that everyone is clear about each other's responsibilities and obligations under the *Workplace Safety and Insurance Act*. The test will determine if:

- the person is an **independent operator** under the *Act*, and is therefore not automatically covered for WSIB purposes. He or she has the option of opening an account with the WSIB and taking out voluntary coverage; OR
- the person is a **worker** under the *Act* and the company using his or her services is considered an employer and is therefore responsible for the person's WSIB coverage.

You have hired an independent operator and you assume you're off the hook.

Not so because...

- An independent operator who employs his or her own workers/helpers is an **employer** and must be registered with the WSIB.
- If you hire an independent operator who hires his/her own workers/helpers but **does not** register with the WSIB, you as the principal may be held responsible for the operator's premiums and the cost of any injury.
- If the independent operator registers with the WSIB but does not pay his/her premiums, you as the principal may be held directly responsible for the independent operator's premiums.

In other words, it is the duty of the principal to ensure that the contractors working for you



who are required to be registered with the WSIB are registered and remain in good standing with the WSIB. To ensure the contractor is in good standing, you must ask the contractor for a **WSIB clearance certificate**. A clearance certificate is confirmation that an employer is registered and has met his/her reporting and payment obligations.

NOTE: A clearance certificate is NOT proof that a person has WSIB optional insurance for him/herself. An independent operator who does not obtain optional insurance with the WSIB may sue the principal and any other person or company for negligence.

Still confused? This is a real life situation. It could be YOU!

In the event of a work-related accident, a principal can be held responsible for independent operators who do not have WSIB coverage. The following examples illustrate why ensuring your independent operators have WSIB coverage is very important.

Company ABC Inc. uses the services of Jim Smith to frame a residential house. Jim Smith does not do the work alone, but uses a helper Bill to do the framing work. Jim Smith did not check if Bill had his own WSIB coverage. As it turns out, Bill doesn't. While framing the house, helper Bill is seriously injured.

Example #1

The WSIB is notified of the accident. The WSIB applies the organizational test and Bill is considered an **independent operator**. As an independent operator without WSIB coverage, Bill sues Jim Smith for negligence and is successful. Jim Smith is unable to pay the award imposed by the courts and goes bankrupt.

Hiring independent operators means taking the time to understand the different ways it could affect your business.

This includes your WSIB obligations.

Be careful, make sure you're covered – it makes good business sense!

Example #2

The WSIB is notified of the accident and applies the organizational test. Bill is considered a **worker** by the WSIB and, therefore automatically entitled to WSIB benefits. As Jim Smith hired and paid Bill, he is responsible for the WSIB premiums. However, Jim Smith did not register with the WSIB before Bill's accident. Consequently, Jim is fined by the WSIB.

Furthermore, Company ABC Inc. did not ask Jim Smith for a WSIB clearance certificate to confirm that Jim had registered with the WSIB and was in good standing. Now Jim cannot pay his WSIB bill. The WSIB has the authority to move

the responsibility "up the chain" and collect from the principal (Company ABC Inc.) who initially hired Jim Smith to do the work.

Company ABC Inc. failed to receive a clearance certificate from Jim Smith. Company ABC Inc. can therefore be held responsible for any money Jim may owe the WSIB. Section 141 of the *Workplace Safety and Insurance Act* addresses a principal's liabilities regarding a subcontractor's responsibilities and provides the capability for the WSIB to deem the principal to be the employer.

If you don't receive a clearance certificate, you may be held liable for other people's WSIB bills!

Questions? Contact the WSIB office nearest you

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200 Front Street West
Toronto, Ontario M5V 3J1
(416) 344-1004
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Ottawa Office

99 Metcalfe Street Suite 700
Ottawa, Ontario K1P 1E8
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Kingston Office

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Canada Trust Centre
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London Office

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