

So you're thinking of using independent operators

in your logging business...

**Here's
what you
MUST
know**

WSIB Workplace Safety & Insurance Board
ONTARIO
CSPAAT 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 logging 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 logging 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 logging industry will have the following characteristics:

- The individual can sell logs to other purchasers for the best price possible.
- The individual reports to the government as a self employed business (Revenue Canada/GST).
- The individual owns and operates his/her own 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. Factors considered in the organizational test are the degree of control that the individual is subject to doing the work, the opportunity for profit or loss, and other applicable criteria that characterize the work relationship.

Sample questions used in the WSIB's organizational test include:

- Does the individual agree to complete a specific job and is he/she responsible for its satisfactory completion or subject to legal penalties for breach of contract?
- Does the person own, rent or lease the equipment necessary to work in woodland operations?
- What control and supervision are exercised over the work performed?

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 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 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 a 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 coverage with the WSIB. The following examples illustrate why ensuring your independent operators have WSIB coverage is very important.

Company ABC Logging Inc. uses the services of John Davidson to manage the cutting of trees in an area covered by their forestry license. John Davidson subcontracts the cutting to Tim Oakley. John Davidson did not request a WSIB clearance certificate from Tim. While cutting trees, Tim is seriously injured.

Example #1

The WSIB is notified of the injury. The WSIB applies the organizational test and Tim Oakley is considered an independent operator. As an independent operator without WSIB coverage, Tim sues John Davidson for negligence and is successful. John Davidson is unable to pay the award imposed by the courts and goes bankrupt.



Example #2

The WSIB is notified of the accident and applies the organizational test. Tim is considered a worker by the WSIB and, therefore automatically entitled to WSIB benefits. As John Davidson hired and paid Tim, he is responsible for the WSIB premiums. However, John Davidson did not register with the WSIB prior to Tim's accident. As a result, John is fined by the WSIB.

Furthermore... Company ABC Logging Inc. did not ask John Davidson for a WSIB clearance certificate to confirm that he was registered with the WSIB and was in good standing. Now, John cannot pay his WSIB bill.

The WSIB has the authority to move the responsibility "up the chain" and collect from the principal (Company ABC Logging Inc.) who initially hired John to manage the cutting.

Company ABC Logging Inc. failed to receive a clearance certificate from John Davidson. Company ABC Logging Inc. can therefore be held responsible for any money John 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!

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!

For further information, please call our general inquiry line at
(807) 343-1710 or toll free **1-800-465-3934**.



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