



Uncovering the Underground Economy and Promoting Health and Safety in the Construction Industry:

A Consultation Paper

On Mandatory Workplace Safety and Insurance Act (WSIA) Coverage in the Construction Industry

Ministry of Labour

March 2006

AN OPEN LETTER TO THE PEOPLE OF ONTARIO

March 28, 2006

The McGuinty Government is committed to tackling the underground economy in Ontario's construction industry to protect the health and safety of Ontario's workers and level the playing field for business.

The underground economy in construction hurts everyone. It undermines legitimate businesses by making them less competitive. It affects the Workplace Safety and Insurance Board (WSIB) and the legitimate workers it protects. It compromises health and safety when under qualified workers are employed. It impacts consumers who may save a few dollars in building costs, but pay the price in poorer building standards.

Employer and labour construction sector stakeholders have asked government to make it mandatory for persons working in construction to register with the WSIB and have workplace insurance coverage. It is agreed that this "mandatory coverage" is critical to stemming underground economic activity. I am pleased to release our consultation paper: *Uncovering the Underground Economy and Promoting Health and Safety in the Construction Industry: A Consultation Paper On Mandatory Workplace Safety and Insurance Act (WSIA) Coverage in the Construction Industry*, and I am interested in hearing your views.

This is an opportunity for you to help shape the future of Ontario. Your views are important to us and I hope you will participate in this process. The consultation paper outlines how to submit your comments by fax, mail or e-mail.

I look forward to hearing from you on this important issue for Ontario's construction sector.
Sincerely,

Steve Peters
Minister

INTRODUCTION

The Ontario government is committed to tackling the underground economy in Ontario's construction industry to level the playing field for business and to protect the health and safety of Ontario's workers.

Employer and labour construction stakeholders have asked government to make it mandatory for persons working in construction to register with the Workplace Safety and Insurance Board (WSIB) and have WSIA insurance coverage. These stakeholders agreed that this "mandatory coverage" is critical to stemming underground economic activity. This activity undermines fair competition and threatens jobs and the health and safety of Ontario's construction workers.

In March 2004 the Ontario Construction Secretariat (OCS), representing both employers and workers in the unionized industrial, commercial, and institutional (ICI) sector commissioned a report entitled, *Attacking the Underground Economy in the ICI Sector of Ontario's Construction Industry*. This report calls for mandatory coverage:

By styling workers as "independent operators" an employer escapes not only the obligation to pay WSIB premiums, but also the requirement to pay certain *Employment Standards Act* benefits, make employer contributions for CPP and EI, and administer source deductions under the *Income Tax Act*.¹

This call to action was echoed by groups such as the Joint Advisory Implementation Group (JAIG) established by the WSIB. The JAIG, comprised of construction labour and management representatives, WSIB staff, as well as representatives from the OCS and the Council of Ontario Construction Associations (COCA) reached a consensus that mandatory coverage is necessary to level the playing field in the construction industry.

Mandatory coverage in construction would require amendments to the *Workplace Safety and Insurance Act, 1997* (WSIA). We are asking for your input on this initiative.

¹ Statement on page 51 of the OCS report entitled, *Attacking the Underground Economy in the ICI Sector of Ontario's Construction Industry*.

BACKGROUND

Coverage in Construction Today

If you are a worker, as defined in the *Workplace Safety and Insurance Act, 1997* (WSIA), and working in construction, you are eligible to claim WSIB benefits in the event that you are injured on the job, and it is mandatory that your employer register with the WSIB for insurance coverage, and pay premiums on your behalf.

However, coverage is *voluntary* for independent operators, sole proprietors, partners in a partnership, and executive officers of corporations. Persons falling into these categories are not required to register with the WSIB, or pay premiums.

Voluntary Coverage and the Underground Economy

A prevalent practice in the construction industry is for persons to self-declare independent operator status, and decline optional WSIA insurance to avoid paying WSIB premiums. However, in the event of a work injury, many who have declared themselves as independent operators turn around and claim WSIB benefits although no premiums have been paid on their behalf.

This practice contributes to an underground economy in the construction industry. Furthermore, not only are employers relieved of WSIB costs; they also may avoid adhering to other employer obligations. These obligations include those of the *Employment Standards Act, 2000*, making Canada Pension Plan and Employment Insurance employer contributions, and administering source deductions under the *Income Tax Act*.

Furthermore, this practice can result in some construction personnel at a job site being registered with the WSIB, while others are not registered. Mandatory coverage would promote a system where everyone has a vested interest to ensure proper health and safety practices and the prevention of workplace injuries.

The Mandatory Coverage Proposal

The Government may consider introducing a bill that, if passed, would amend the WSIA to extend mandatory workplace safety insurance to every independent operator, sole proprietor, partner in a partnership and executive officer of a corporation carrying on business in construction. Mandatory coverage would not be extended to “handypersons” doing work on a periodic or casual basis at a private residence.

The bill would set out the potential liability as well as obligations on the “principal” (i.e., the person who engages a contractor or subcontractor to do construction work). The principal may be liable for the payment obligations of the contractors and subcontractors who perform work for the principal - unless he or she directly engages the contractor or subcontractor and complies with the obligation to obtain proof of the contractor's/subcontractor's registration and compliance with payment obligations under the WSIA. The proof required would be a clearance certificate issued by the WSIB showing that the contractor or subcontractor has registered and complied with the payment obligations under the WSIA. The certificate would need to be kept for at least three years.

The potential liability and obligations set out in the paragraph above would not apply if the construction work relates only to a private residence that is occupied or will be occupied by the person who hires a contractor to do construction work (e.g. a homeowner) or his or her family members.

The bill would create additional offences for failure to comply with these obligations as well as other existing obligations relating to the payment of premiums.

The bill would also provide regulation-making authority to require employers in construction to provide the WSIB with detailed information about their workers. This would provide for the establishment of a ‘named insured’ registration system to support implementation and enforcement of mandatory coverage in construction. A ‘named insured’ system would require all persons working in construction to be identified by name to the WSIB, either as a worker on an employer’s payroll or as an independent operator with the WSIB, and to have an approved identification card available for inspection when at work.

MANDATORY COVERAGE IN CONSTRUCTION: A DISCUSSION

We are seeking your comments, suggestions and input about this proposal.

We have a number of questions to help us organize your comments and suggestions, and to help us review your answers. The questions are organized around:

- A. Demographics;
 - B. The Underground Economy
 - C. The Proposal;
 - D. Broader Economic Impacts;
 - E. Work Specific Issues;
 - F. Other Issues
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The following questions are meant to encourage, not limit, discussion. We would like your comments and suggestions on the issue of mandatory coverage in construction to enable us to best provide for Ontario's needs.

A. DEMOGRAPHICS

The government wants to assess the potential impact of mandatory coverage in construction on Ontario's diverse construction sector.

It would assist us in organizing the comments that we receive if you could provide some information about your individual situation.

What we want to know:

1. What type of construction work do you do?
 2. Do you identify yourself as an employer, independent operator, sole proprietor, partner in a partnership or executive officer in the construction industry?
 3. What sector or sectors do you work in: industrial, commercial and institutional (ICI)? Home Renovation? Road Building?
 4. Do you consider yourself to be a "small business"? How many people do you employ? (e.g., 1-5; 6-20; 21-100; or >100?)
 5. Do you consider yourself a "handyperson" doing construction work only on a periodic or casual basis at a private residence? If yes, how much time per week/per month do you perform this type of work?
 6. Is your employer/workplace unionized?
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B. THE UNDERGROUND ECONOMY

The government is seeking input on how the underground economy affects the construction sector, and your business in particular.

What we want to know:

7. In your view, how does the underground economy in construction impact Ontario's construction sector as a whole?
 8. How does it impact your business in particular?
 9. In your view, where do most of the underground economy issues arise? Why is underground economic activity happening in construction? Do any other laws need to be changed to uncover underground activity?
 10. Aside from this proposal, in what other areas do you see a role for the government in combating the underground economy?
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C. THE PROPOSAL

The government wants your views on this proposal to determine if we have it right.

What we want to know:

11. What are your views on extending mandatory coverage in construction as we have outlined in this proposal?
 12. Do you think that mandatory coverage should be a requirement for all of the following: independent operators, sole proprietors, partners in a partnership and executive officers of corporations?
 13. In your view, will mandatory coverage be an effective tool to combat the underground economic activity and promote health and safety in the construction industry?
 14. In your view, what are the main benefits /disadvantages of extending coverage?
 15. What do you think about the proposal to have the person for whom the construction work is done be liable for contractors' and subcontractors' premium and other payment obligations under the WSIA?
 16. What are your views regarding the WSIB clearance certificate requirements?
 17. What are your views about possible additional offence provisions in the WSIA for failure to comply with payment and WSIB clearance certificate obligations?
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D. BROADER ECONOMIC IMPACTS

The government wants to assess the potential impact of mandatory coverage in construction on Ontario's overall economy and the cost of doing business.

It is also important to identify any possible ripple effects for consumers, other sectors of Ontario's economy, etc.

What we want to know:

18. Do you think mandatory coverage will affect the competitiveness of your business? If so, how?
 19. What impact, if any, will there be on consumers?
 20. Do you think mandatory coverage will have a positive or negative effect on Ontario's overall economy? Do you think it will affect any one sector of the construction industry more than others? If so, how?
 21. Are there any other industries that would be impacted by this proposal?
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E. WORK SPECIFIC ISSUES

It is important for government to understand the unique effect that mandatory WSIB coverage may have on different construction jobs.

In answering, please consider your specific job, trade or business, or the jobs, trades or businesses that you represent.

What we want to know:

22. How do you think this proposal for mandatory coverage in construction may affect specific construction sector jobs? Will certain sector jobs be affected more than others?
 23. What impact do you see mandatory coverage having on the nature of construction business relationships (e.g. the relationships between individuals and contractors/principals and unions)?
 24. What impact do you see mandatory coverage having on the promotion of health and safety and the prevention of workplace injuries in the construction industry?
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F. OTHER ISSUES

What we want to know:

25. If a Bill were passed, do you think mandatory coverage in construction should come into effect immediately? Should it be as soon as the legislation receives Royal Assent, a year from that date, etc.? Why? Should there be delayed implementation for specific sectors?
 26. Do you currently have private insurance? If yes, what does it offer? If no, why? (For example, what percentage of wage loss is covered? Does it cover work-related and non work-related injuries? Does it provide other non-monetary benefits, e.g., training or other assistance for returning to the workforce after an injury, etc.?)
 27. What impact would mandatory coverage have on your private insurance arrangements?
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How to Respond to this Consultation Paper

If you are interested in responding to this paper with your comments, ideas and suggestions, please contact the Ontario Ministry of Labour by:

Fax: (416) 326-7650; Attention: WSIB Coverage Project

Mail: WSIB Coverage Project, 400 University Avenue, 12th floor, Toronto, Ontario, M7A 1T7

E-mail: WSIBcoverage@mol.gov.on.ca

Please provide your response by June 30, 2006.

Should you require further information, please call 1-866-833-6678 (toll-free).

Your input will help us move forward in combating the underground economy in the construction sector to level the playing field and protect Ontario's workers.

Thank you for taking the time to participate.

Submissions and comments provided to the Ministry of Labour are part of a public consultation to solicit views on possible changes to the Workplace Safety and Insurance Act, 1997, to combat the underground economy in construction. This process may involve disclosing materials, comments, or summaries of them, to other interested parties during and after the public comment period. However, the Ministry will not disclose personal information, such as an individual's name and contact details, unless required by law.

If you have any questions regarding freedom of information or privacy matters, you may contact the Ministry's Freedom of Information and Privacy office at (416) 326-7786.
