Consultation Summary

Under the *Workers Compensation Act,* those who are considered to be workers have automatic compensation coverage. Employers are required to pay for this coverage.

The policy, Employer Registration (POL-19), sets out the requirements for employers to register with the WCB to pay for workers compensation coverage. Employers must provide information about the payroll of their workers, which is used to calculate how much the employer pays the WCB.

Employers may hire independent operators to perform work, but automatic coverage applies only to workers. Independent operators:

- Are not considered to be workers under the *Act.*
- Are not eligible for coverage under an employer's registration.
- Do not have workers compensation coverage unless they purchase their own personal WCB coverage.

As authorized by legislation and stated in the current policy, Employer Registration (POL-19), employers are required to include independent operators in their registration, if the independent operator does not have their own WCB coverage.

Proposed Amendments

The WCB is proposing that, as of January 1, 2022, the requirement to include independent operators in the employer's registration be removed. This will better align the assessments paid by employers with the coverage provided for their workers.

For employers who are not sure whether the individuals they hire are workers or independent operators, the policy amendments provide a proactive mechanism for determining status.

- Those determined to be independent operators would be responsible for their own assessments if they have personal coverage. If they do not have personal coverage, they are not covered and no assessments are owed.
- Those determined to be workers would be included in their employer's registration.

In addition to the proposed amendments, there are a number of editorial changes. These changes are considered non-substantive, in that they explain rather than change the intent of the policy.

The attached draft policy is presented with the non-substantive changes applied. The proposed

amendments are tracked with new content **bolded** and a ~~strikethrough~~ on deleted content.

If the policy is approved, the WCB will work with employers and independent operators to ensure they understand their rights and responsibilities.

Related amendments are also being proposed to WCB policy, POL-22, Personal Coverage. A consultation summary and invitation to provide feedback have been posted on the Policy Consultation page of the WCB website.

Chapter:
EMPLOYER SERVICES

Subject:
EMPLOYER REGISTRATION

Effective Date:
November 15, 1994

Last Update:
Draft September 23, 2021

PURPOSE STATEMENT:

The purpose of this policy is to set out the registration requirements for employers to establish and maintain workers compensation coverage**.**

REFERENCE:

Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, Sections 2, 3, 4, 64, 72 (10), 73(4), 76
Workers Compensations Act R.S.P.E.I. 1988, Cap. W-7.1, General Regulations, Sections 2, 3
Workers Compensation Board Policy, POL-14, Assessable Payroll and Assessment Billing
Workers Compensation Board Policy, POL-22, Personal Coverage
Workers Compensation Board Policy, POL-23, Setting Assessment Rates
Workers Compensation Board Policy, POL-45, Clearance Certificate Workers Compensation Board Policy, POL-80, Fraud Prevention and Investigation
Workers Compensation Board Policy, POL-125, Optional Coverage

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DEFINITION:

In this policy:

"Independent operator," also referred to as an independent contractor, means an individual who is self-employed and does not employ workers.

POLICY:

Registration Requirements

1. All employers who operate in Prince Edward Island and have one or more workers are required to have workers compensation coverage, unless they are in an industry that is excluded from the *Workers Compensation Act.*

   Exclusions to the *Workers Compensation Act* are set out in regulations.

   More information about who is considered a worker is in Workers Compensation Board (WCB) policy, POL-74, Worker.

2. New employers must register with the WCB and pay assessments established by the WCB. Employers are required to register with the WCB as a new employer when:

   - Starting a business, prior to the start of business operations.
   - Buying a business.
   - Changing the legal name of the business.
   - An independent operator becomes an employer by hiring one or more workers.
   - An unincorporated employer becomes incorporated.
   - The business is no longer excluded from requiring coverage under the *Workers Compensation Act.*

3. When registering, employers must provide information to the WCB about their business operations and payroll of their workers. This information is used to determine the employer's assessment rate and assessment amount payable to the WCB, as set out in WCB policies, POL-23, Setting Assessment Rates and POL-14, Assessable Payroll and

Assessment Billing.

4. Employers are required to notify the WCB in writing of any changes to the information provided upon registration.

Voluntary Coverage

5. An employer in an industry outside the scope of the *Workers Compensation Act* may be eligible for optional coverage.

6. An employer who wants to be considered for optional coverage must apply to the WCB as outlined in the Workers Compensation Board policy, POL-125, Optional Coverage.

Proprietors, Partners, Owners and Directors

7. Proprietors and partners of a non-incorporated business, and owners and directors of a corporation, are not considered to be workers under the *Workers Compensation Act* and they are not included in the employer's registration and payroll reporting.

8. Proprietors, partners, owners and directors may apply for voluntary workers compensation coverage to have the same protections as workers in case of a workplace injury or illness, as set out in WCB policy, POL-22, Personal Coverage.

Independent Operators

9. Independent operators are not considered to be employers or workers under the *Workers Compensation Act* and are not required to register with the WCB. **Independent operators are not included in the employer's registration and payroll reporting.**

~~10. If an independent operator is hired as a contractor, and the independent operator does not have their own workers compensation coverage, the independent operator is included in the workers compensation registration of the employer and reported in their assessable payroll, as per Workers Compensation Board Policy, POL-14, Assessable Payroll and Assessment Billing.~~

10. Independent operators may apply for voluntary workers compensation coverage to have the same protections as workers in case of a workplace injury or illness, as outlined in WCB policy, POL-22, Personal Coverage.

11. Employers who hire individuals who may be independent operators **should confirm their status, by**:

    - **Asking the individual for a WCB clearance letter indicating their status, as set out in WCB policy, POL-45, Clearance Certification, or**
    - **Asking the individual to contact the WCB to determine their status as either a worker or independent operator.** The WCB considers factors including the individual's ability to offer services to multiple clients and work for other companies, the contract for service, control over hours worked, oversight and supervision of work activities, the chance of profit or loss, and ownership of tools and equipment**.** ~~is paid business income; does not perform work that is an integral part of the business of the person or entity for whom the work is performed; is responsible to pay all business expenses and remit income tax, GST, etc.~~

12. If the WCB determines that the individual is a worker and not an independent operator, the employer must include them in their payroll reporting to the WCB. This is outlined in WCB policy, POL-14, Assessable Payroll and Assessment Billing.

Registration Renewal

13. By February 28th of each year, all registered employers are required to renew their WCB registration**.** The renewal must include the following information related to business operations:

    - Actual assessable payroll for the previous calendar year.
    - An estimate of assessable payroll, for the current calendar year (unless the employer pays assessments using the Monthly Assessment Payment Option).

    More information about reporting assessable payroll is outlined in WCB policy, POL-14, Assessable Payroll and Assessment Billing.

14. Public notice will be provided each year, in advance of the registration deadline, reminding employers to register and advising that a penalty will be levied for late registration.

Consequences of Non-compliance

<u>Late Registration</u>

15. A late registration penalty will be levied against an employer who fails to meet the February 28th registration deadline. The late registration penalty is 5% of the employer's annual assessment and will not be less than $50 or more than $500 for each assessment year.

Failure to Register

16. If an employer, who is required to register for workers compensation coverage, fails to register, the employer assessments due for years of unregistered operation, up to a maximum of three years but not including the current year of assessment, will be retroactively charged to the employer.

17. The WCB will determine the amount charged to the employer for assessments due and may levy a penalty for failing to register.

18. Where there is deliberate misrepresentation on the part of the employer failing to register, more than three years assessments may be retroactively charged to the employer, as set out in WCB policy, POL-80, Fraud Prevention and Investigation.

19. If a worker of an unregistered employer files a claim, the unregistered employer may also be charged the full cost of the worker's claim.

Failure to Submit Payroll Estimate

20. An employer's assessable payroll will be estimated by the WCB if the employer either fails to submit an estimate or fails to reasonably estimate assessable payroll when registering or renewing registration. More information is set out in WCB policy, POL-14, Assessable Payroll and Assessment Billing.

Closure of Employer Accounts

21. Employer accounts will be closed when an employer is no longer required to be registered with the WCB.

Situations where an employer may no longer be required to be registered with the WCB include, but are not limited to:

- The employer no longer has workers.

- The employer becomes an independent operator.
- The employer no longer operates in Prince Edward Island.
- The employer is no longer in business.
- The employer has sold the business
- The employer's business no longer operates in an industry requiring coverage under the *Workers Compensation Act.*

Employers are required to notify the WCB in writing of any changes noted above.

22. All outstanding assessment balances on closed employer accounts will be reconciled as set out in WCB policy, POL-14, Assessable Payroll and Assessment Billing.

HISTORY:

January 16, 2020 - Non-substantive changes to clarify employer registration requirements related to independent operators.

July 12, 2019 - Non-substantive changes to reorganize content for improved readability.

June 28, 2012 - Amended to incorporate the content of policy POL-24, "Retroactive Assessment Of Non-Registered Employers" and POL-16, "Close-Out Of Employer Accounts", which were both rescinded. Also, amended the definition of independent operator and added information about the type of information the Workers Compensation Board will consider when determining if an individual is an independent operator.

July 28, 2011 - Amended this policy to include the content from the following policies: POL-47, "Arbitrary Assessment"; POL-46, "Penalties For Late Registration"; and POL-43, "Penalties For Underestimating Annual Payroll".

April 29, 2010 - The policy was updated as a result of the 60 month policy review process.

September 22, 2005 - The policy was updated as a result of the 60 month policy review process. Name changed from "Employer Registration Requirements" to "Employer Registration."

May 18, 2000 - Replaced "Board" with "Workers Compensation Board" and amended format.

February 4, 1999 - Reviewed and reaffirmed with the Board of Directors.

Board of Directors Approval Date: November 15, 1994