

Consultation Summary

The Workers Compensation Board of PEI (WCB) recognizes that the needs of workers and employers are evolving and becoming more complex. With the recent shift towards more remote and temporary work, the determination of appropriate coverage and the payment of assessments for these workers and employers is more challenging than ever before.

A key goal identified in the WCB Strategic Plan 2024-2026 is to “*Provide consistent, fair and comprehensive coverage and compensation*”. Proposed amendments to the policy, **Employer Registration (POL-19)**, will help to achieve this by clarifying coverage requirements for out of province employers, specifically with respect to non-resident employees temporarily working in PEI and for their employees who work and reside in PEI full-time. The amended policy will also clarify coverage requirements for PEI-resident employees who travel outside the province for work-related purposes.

The attached draft policy is presented with the non-substantive changes applied. The proposed amendments are tracked, new content is **bolded** and content to be deleted is shown with a ~~strike through~~. A copy of the current policy is attached for comparison.

POLICY NUMBER: POL-19

Chapter:
EMPLOYER SERVICES

Subject:
EMPLOYER REGISTRATION

Effective Date:
November 15, 1994

Last Update:
~~December 9, 2021~~ — **DRAFT February 26, 2024**

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-80, Fraud Prevention and Investigation
Workers Compensation Board Policy, POL-125, Optional Coverage

DEFINITION:

In this policy:

“Independent operator” 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.

Out-of-Province Employers

5. **If you are an employer from outside of PEI who performs work within PEI, you may be required to register depending on the nature and duration of the work.**

You are required to register with WCB PEI if any of the following situations apply:

- You employ PEI-resident workers, working for any period of time.
- You employ non-PEI residents to work in PEI and you intend for them to work a total of 10 or more days in PEI in a calendar year.

Work-Related Travel

6. If you are a PEI employer whose workers travel out of province for work, you are responsible for ensuring you contact the jurisdiction where you intend to operate to make sure you are compliant with WCB registration requirements in that jurisdiction.

If a PEI worker is injured while working in another province or country, WCB PEI may cover the worker's medical and wage loss costs if:

- The worker's employer is located in PEI
- The worker's residence and usual place of employment are in PEI
- The employment is such that the worker is required to work both in and out of the province, and
- The worker is still working for the same PEI employer and will return to PEI in less than six months.

7. **Out-of-Province Employees of PEI Employer**

If your business is located in PEI and you have workers who work and reside full-time outside of PEI, including those working from home outside of the province, those workers are not covered by WCB PEI. This includes workers who may have previously been working in PEI but now work and reside full-time in another province. You will need to contact the workers' compensation board where those workers reside and work to determine whether you need to register for coverage in those jurisdictions.

Voluntary Coverage

85. An employer in an industry outside the scope of the *Workers Compensation Act* may be eligible for optional coverage.
96. 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

- 107.** 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.
- 118.** 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

- 129.** 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.
- 130.** 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.
- 141.** 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, 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.
- 152.** 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

- 1316.** 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.

174. 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

Late Registration

185. 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

196. 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.
2017. The WCB will determine the amount charged to the employer for assessments due and may levy a penalty for failing to register.
2118. 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.
2219. 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

230. 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

241. 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.

252. 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:

December 9, 2021 - Amended to remove the requirement to include independent operators in employers' registration and payroll reporting, and to provide a mechanism for determining an individual's status. Non-substantive editorial changes.

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.

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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.

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Consequences of Non-compliance

Late Registration

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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.

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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.

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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.

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