

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 objective identified in the WCB Strategic Plan 2024-2026 is to “*Protect more workers through enhanced education and inclusive coverage*”. Proposed amendments to the policy, **Worker (POL-74)**, will help to achieve this by clarifying coverage for PEI-resident and temporary out of province employees of out of province employers. It will also clarify that non-PEI resident employees of PEI employers are not considered workers under the *Workers Compensation Act*.

Non-substantive content from Learners (POL-94) will be incorporated into Worker (POL-74) and Temporary Wage Loss Benefits (POL-86) upon final approval of amendments to the Worker policy. With these non-substantive changes, it is proposed that Learners, (POL-94) be rescinded upon final approval of the Worker policy.

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-74

Chapter:
CLAIMS

Subject:
WORKER

Effective Date:
December 13, 2001

Last Updated On:
December 25, 2021 DRAFT – February 28, 2024

PURPOSE STATEMENT:

The purpose of this policy is to explain who may be eligible for compensation as a worker under the *Workers Compensation Act*.

REFERENCE:

Workers Compensation Act R.S.P.E.I.1988, Cap. W-7.1, Section 1 (1)(z), 2, 2.1, 3, 4
Workers Compensation Act R.S.P.E.I.1988, Cap. W-7.1, General Regulations, Section 2
Workers Compensation Board Policy, POL-22, Personal Coverage
Workers Compensation Board Policy, POL-71, Conditions for Entitlement
Workers Compensation Board Policy, POL-125, Optional Coverage
Workers Compensation Board Policy, POL-140, Federal Government Employees

DEFINITION:

In this policy:

“Independent operator” means an individual who is self-employed and does not employ workers.

“Learner” means a person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry within the scope of this *Act* for the purpose of undergoing training or probationary work as a preliminary to employment.

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“Student” means a person who is pursuing formal education as a full-time or part-time student and is employed by an employer for the purposes of the employer’s industry, although not as a learner or an apprentice.

“Worker” means a person who enters into or works under a contract of service or apprenticeship, written or oral, express or implied; a learner or student; a volunteer firefighter; a person in any industry while they are actually engaged in rescuing or protecting or attempting to rescue or protect life or property; and any other individual the WCB determines is a worker.

POLICY:

1. The Workers Compensation Board (WCB) assists injured workers by providing compensation benefits and services in the event of a workplace injury. To be eligible, an individual must be considered a worker under the *Workers Compensation Act* and meet the criteria set out in WCB policy, POL-71, Conditions for Entitlement.
2. This policy explains the types of individuals who are workers with compensation coverage, those who are excluded from workers compensation coverage and those who the WCB may consider to be workers.

Workers with Compensation Coverage

3. A worker is a person who enters into or works under a contract of service or apprenticeship with an employer. Generally, this means that there is a written or verbal employer-employee relationship that may be explicit or implied by the nature of the working relationship. The employee, or worker, agrees to work for an employer in return for wages, salary or other forms of payment. The employer has the right to control what work is performed, and where, when, and how the work is to be performed.
 4. The following types of individuals are also considered to be workers under the *Workers Compensation Act*:
 - A learner undergoing training or probationary work prior to employment.
Learners performing unpaid training or probationary work are covered by the WCB for injuries arising out of and in the course of employment. The unpaid training or unpaid probationary work which a learner is performing, as part of
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a program offered by a recognized learning institution, is considered to be the learner's employment for the purposes of the *Workers Compensation Act*.

Commented [JSJ1]: Content from POL-94 Learners

- A student who is pursuing formal education on a full-time or part-time basis and is employed by an employer. Students are not considered workers when attending classes.
- A volunteer firefighter.
- A volunteer while they are attempting or in the act of rescuing or protecting life or property, such as Ground Search and Rescue.
- A person the WCB determines to be a worker by a WCB Board Order, approval of personal coverage, or approval of their employer's optional coverage.

Employees of Out of Province Employers

5. **PEI-resident employees of out of province employers, working for any period of time, are considered workers.**
6. **Non-PEI resident employees of out of province employers who perform work within a mandatory industry in PEI for an intended period of 10 or more days in a calendar year are considered workers.**

Exclusions from Workers Compensation Coverage

5-7. Those working in the following occupations or industries are not considered to be workers under the *Workers Compensation Act*:

- Artists, entertainers and performers.
- Circus operations, traveling shows and trade shows.
- Clergy.
- Demonstrating and exhibiting.
- Employment by a person in their private residence.
- Deliverers of newspapers or other publications.
- Salespersons who are not restricted to selling goods for one manufacturer or supplier.
- Selling or similar canvassing on streets.
- Sports professionals, sports instructors, players and coaches.
- Volunteer workers.
- Outworkers.
- Elected officials of a city, town or municipality.
- Presidents, vice-presidents, directors and other officers of a company.
- Transportation by taxi.
- Fishing.

Out-of-Province Employees of PEI Employers

8. Employees of PEI employers who reside full-time outside of PEI, including those working from home outside of the province, are not considered workers under the PEI *Workers Compensation Act*. This includes employees who may have previously been working in PEI but now work and reside full-time in another jurisdiction. Workers compensation coverage for these employees must be obtained in the jurisdiction of residence.

Individuals Who May Be Considered Workers

Personal Coverage

- 6.9. The following individuals may apply to be considered a worker, as set out in WCB policy, POL-22, Personal Coverage:

- A proprietor or partner of a non-incorporated business.
- An owner or director of a corporation.
- An independent operator. If it is not clear whether an individual is an independent operator or a worker the WCB will make the determination. 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, as set out in WCB policy, POL-22, Personal Coverage.

If the WCB approves personal coverage, the individual is considered a worker and has the same protections as workers under the *Workers Compensation Act*.

Optional Coverage

- 7.10. Employers in excluded industries may apply for optional workers compensation coverage, as set out in WCB policy, POL-125, Optional Coverage. If the WCB approves optional coverage, the workers of the excluded employer have compensation coverage like any other worker.

Board Order

108. An individual working in an occupation or industry that is excluded from the *Workers Compensation Act* may be considered a worker by order of the WCB Board of Directors.

Federal Employees

119. Workers compensation coverage for those who work for the federal government is set out in WCB policy, POL-140, Federal Government Employees.

HISTORY:

December 25, 2021 - Non-substantive changes following amendments the *Workers Compensation Act* and WCB policy, POL-22, Personal Coverage, and editorial changes for clarification.

February 8, 2017 - Amended to reflect to the inclusion of farming under the *Workers Compensation Act*, effective January 1, 2017.

November 2, 2016 - Non-substantive changes. Policy reviewed Director and Chief Executive Officer; no other revisions required.

November 26, 2009 - The policy was reviewed as a result of the 60 month policy review process. Section #1 has been amended to ensure consistency with the Act. In addition, several sections have been removed as the content is also covered in Workers Compensation Board policy, POL04-23, "Arising Out Of And In The Course Of Employment".

May 26, 2003 - Amended to ensure the term "worker" is consistent with the definition provided in the *Workers Compensation Act*.

Board of Directors Approval Date: December 13, 2001

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Current Policy