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The Top 5 Things Employers Need to Know About BC Workers' Compensation Legislation

by Ryan A. Shaw

Workers' Compensation Act: Top 5 Considerations for Employers

1. Who needs to be registered?
2. Coverage under the Act: the definition of “employer”
3. Controlling and reducing premiums
4. Duty to prevent bullying and harassment in the workplace
5. The comfort of s.10 of the Act

Disclaimer


- The following is only intended to identify some of the important aspects of the *Workers' Compensation Act* (the “Act”) and associated policies and procedures of WorkSafe BC (“WCB”).
- A useful starting point for further enquiry can be found in the various resources and publications produced by WCB, many of which can be found on its website at: <http://www.worksafebc.com>
- Always consult legal counsel when faced with a specific problem.

1. Who Needs to be Registered?


- Generally, you must register with WCB if you:
 - Employ and pay workers on a regular, casual or contract basis;
 - Come from another province or country to work in BC;
 - Work in the commercial fishing industry, or trucking industry and operate trucks in BC; or
 - Hire someone to work in or around your home for a certain period of time

1. Who Needs to be Registered? (cont'd)

- **Homeowner Registration:**
 - In certain cases, homeowners must register with WCB.
 - Homeowners conducting renovations on their homes should ensure that those contractors they hire are registered and in good standing.
 - Registration can help protect you.



worksafebc.com



Renovating or building your home? You may need to register with WorkSafeBC

Shelter your investment

Renovating your home is an investment in your future. As with any investment, you should protect yourself against loss in every way possible. So, if you hire an individual or business to work in or around your home, be sure to check your registration requirements with WorkSafeBC or it could end up costing you more than you had planned.

Homeowners can be employers

Many home renovators don't realize that, under law, they may have to register and pay for workers' compensation coverage when they hire someone to work at their home for a certain period of time. The reason is simple: if someone you hire gets injured on the job, the costs can be extremely expensive — sometimes more expensive than the renovation itself. Once registered, you are required to pay premiums that go towards funding B.C.'s workers' compensation costs — such as medical and vocational rehabilitation services, and wage loss for injured workers — and to provide a safe and healthy working environment for your workers. In exchange, you are protected against expensive lawsuits from workers who are injured at your home — lawsuits which could put your renovation costs through the roof, or worse, be financially devastating.

Measure once, check twice

Many contractors are already registered with WorkSafeBC. If this is the case with your contractor, you may not need to be registered as well. However, you should check the contractor or firm's record with WorkSafeBC to protect yourself against liability for any unpaid premiums or workers' compensation costs related to your home project. To do so, follow these simple steps:

1. Ask the firm for its WorkSafeBC account number.
2. Get a letter of clearance from WorkSafeBC. You can obtain one online in less than a minute on WorkSafeBC's website at **WorkSafeBC.com**. Select "Obtain clearance letter" from the home page.
3. Follow the prompts on the screen to obtain the clearance letter, which measures the status of your contractor's account — telling you whether the contractor is in fact registered and paying premiums to WorkSafeBC.

Be sure to do this at least twice: before hiring the firm and then again before making your final payment to the firm.

If you don't have Internet access, contact our Clearance Section at **604 244-6380**, or toll-free at **1 888 922-2768**. Our representatives will send you the letter by fax or mail.

What to do if your contractor is not registered

Contact WorkSafeBC's Employer Service Centre at **1 888 922-2768** or **604 244-6181**. Our representatives will help you determine who needs to be registered with WorkSafeBC — you or your contractor. You can also find information about WorkSafeBC registration requirements at **WorkSafeBC.com**.

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2. Coverage Under the Act: Focus on the definition of Employer

- The “employer”
 - An “employer” is defined in s.1 of the Act, generally, as a person or entity employing workers.
 - This definition encompasses a variety of different business structures: Proprietorships, Corporations and Limited Partnerships.
 - It is important to understand who is registered as the employer

2. Coverage Under the Act: Focus on the definition of Employer (cont'd)

- Proprietors and Partners:
 - Proprietors and partners of an unincorporated business are employers if the business has workers.
 - If the business does not have workers, they are not employers, but “Independent Operators”
- Principals of Corporations:
 - The incorporated entity is considered the employer.
 - Directors, shareholders and other active principals are generally considered workers.

2. Coverage Under the Act: Focus on the definition of Employer (cont'd)

- Time of registration can be important for claims purposes.
- Limited Partnerships
 - Only the “general” partner registered under the Partnership Act will be registered as the employer.
 - Limited partners are neither considered employers nor workers, unless they become active in the business.

3. Controlling and Reducing Premiums

- How are premiums determined?
 - Premiums are determined by your business':
 - Classification Unit (“CU”) base rate;
 - Experience Rating; and
 - Assessable Payroll
- Definitions:
 - CU – groups employers based on their industrial activities
 - Base Rate – the amount per \$100 of payroll WCB charges the particular industry.
 - Experience Rating – discount or surcharge your business earns each year.

3. Controlling and Reducing Premiums (cont'd)

- Assessable Payroll – total amount of wages paid to workers
- Calculating your Premium

Sample calculation of an annual premium

For example, the 2013 base rate for a veterinary hospital (CU 763032) is \$0.46 for every \$100 of payroll. This means that a business in this CU with an annual payroll of \$200,000 and an experience rating discount of 10% will pay an annual premium of \$828 in 2013.

$$\frac{\$0.46 - (\$0.46 \times 10\%)}{100} \times \$200,000 = \$828 \text{ premium}$$

3. Controlling and Reducing Premiums (cont'd)

- How to Reduce your Premiums
- Ensure the business is assigned to the proper CU
 - Promptly notify WCB of any change in business operations
- Reduce workplace injuries
 - Your Experience Rating is based on the injuries and claims costs for your specific business
 - Experience Rating affects the discount or surcharge you receive compared to other businesses in your industry.
- Ensure your payroll is accurately reported

4. Employer's Duties: Bullying and Harassment in the Workplace

- The Policy
 - WCB has developed policies, effective November 1, 2013, to help address workplace bullying and harassment.
 - Section D3-115-2 of the WCB Prevention Manual outlines the duties of employers with respect to workplace bullying and harassment.
 - The above policy stems from the employer's duty to ensure the health and safety of workers pursuant to ss.115(1)(a) and 115(2)(e) of the Act.
 - "bullying and harassment" is defined in policy.

4. Employer's Duties: Bullying and Harassment in the Workplace (cont'd)

- Reasonable Steps to Address the Hazard:
 - There are a number of steps that employers can take to prevent, or minimize, workplace bullying and harassment, as set out in s. D3-115-2 of the Prevention Manual.
 - These include:
 - Developing a policy statement with respect to workplace bullying and harassment;
 - Developing and implementing appropriate incident reporting procedures;
 - Developing and implementing procedures for how incidents will be dealt with;

4. Employer's Duties: Bullying and Harassment in the Workplace (cont'd)

- Informing workers of these policies and procedures; and
 - Training supervisors and workers.
- Remember, every worker has a corresponding duty to protect the health and safety of themselves and others (s.116 of the Act).

5. The Comfort of s.10 of the Act

- Restriction on tort claims:
 - Section 10(1) of the Act provides that a “worker” who is injured “in the course of employment”, is restricted to compensation available under the Act.
 - The potential defendant in the tort action must be another “worker” or an “employer”, as those terms are defined in the Act.
 - The “worker” does not have to be employed by the defendant “employer” for s.10 of the Act to apply.
 - **Section 10(1) of the Act acts as a form of insurance for employers**

5. The Comfort of s.10 of the Act (cont'd)

- The Key Issues:
 - It is not always clear when a worker is injured “in the course of employment”
 - “course of employment” is not defined in the Act.
 - Criteria for determining whether an injury occurred during the course of employment are set out in Chapter 3 of the *WCB Rehabilitation Services Claims Manual*
 - It is important to note that the employer or worker who causes the injury must also be in the course of employment for s.10 to apply to bar recovery in tort.

5. The Comfort of s.10 of the Act (cont'd)

- It is not always clear whether a particular worker or employer is governed by the Act
 - The Act covers all employers and workers who are not exempted from Part 1 of the Act by order of the Board
 - The Board has made several general exemptions from coverage, which can be found in section AP1-2-1 of the WCB Assessment Manual
 - Note that the exemptions are quite narrow



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