

## **Program Policy Background Paper**

Minor revisions to program policies related to  
contractors and subcontractors

June 03, 2013

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## **1. Introduction and Purpose of this Paper**

In September 2012 the WCB Board of Directors added the topic of the clarification of the term contractor and subcontractor to the Revolving Program Policy Agenda as a minor policy revision<sup>1</sup>. Recently, in the absence of a definition in the *Act, Regulations*, or policy, the Appeal System<sup>2</sup> has adopted an interpretation of the term contractor/subcontractor that is more restrictive than the WCB's traditional interpretation. The proposed revisions to impacted program policies discussed in this paper, and contained in the draft policies attached, do not change, limit, or expand these requirements in the *Act* or policies. Rather, they codify the WCB's traditional interpretation of the terms and ensure the scope of the application of the contractor provisions in the legislation and program policy remains the same.

As part of carrying out their operations many employers hire persons or firms, in addition to their employees, to carry out work for their business. Generally speaking, the hiring employer is considered a "principal" and the person that has been hired is a "contractor". In turn, contractors who hire persons to carry out work for them are "subcontractors". The *Workers Compensation Act of Nova Scotia (the "Act")*, *Workers Compensation General Regulations (the "Regulations")* and WCB program policy contain specific provisions related to covered employers (principals) hiring contractors and subcontractors.

There are no explicit definitions of the term contractor or subcontractor in the *Act, Regulations* or program policy. The WCB has traditionally interpreted the terms inclusively, considering a contractor to be a person or firm hired to perform work or services (that includes a labour component) at the principal's jobsite (or a site determined by the principal). A subcontractor has the same meaning, except that the subcontractor performs work or services on the jobsite of a contractor. The work or services performed by either may be integral to, **as well incidental**, to the principal's (or contractors') business.

Appeal System decisions have indicated that for a person or firm to be considered a contractor/subcontractor, the work or service they provide **must be integral to** the hiring employer's (principal or contractor) business. It is likely this more restrictive interpretation of the term contractor will become ingrained (if no action is taken) in the compensation system, with fewer persons or firms considered contractors/subcontractors. This means the contractor/subcontractor provisions in the legislation and program policy would apply to fewer employers and workers. A key result of a more restrictive definition of the terms is that fewer workers would have compensation coverage and fewer employers would be protected by the *Act* from being sued for the costs of a workplace injury.

Contractor requirements, and the WCB's interpretation of the terms contractor and subcontractor, have been in place for decades. The objective of revising contractor related policies is to codify the WCB's traditional interpretation of the terms and ensure the scope of the application of the contractor provisions in the legislation and program policy remains the same. As noted, they do not change any current requirements. These revisions do, however, enhance transparency and support employers' understanding of WCB contractor and subcontractor requirements.

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<sup>1</sup> A topic is considered a minor policy issue if, for example, it corrects grammar, references, does not change policy intent, has no financial impacts on the System, no impact on benefit or rate levels, no impact on entitlement, and appears neutral (no strong stakeholder views).

<sup>2</sup> WCB Internal Appeals, Workers Compensation Appeal Tribunal.

The purpose of this paper is to provide stakeholders with background information and an overview of the proposed revisions to contractor related program policies. As a minor policy issue, a 1 Stage consultation process will be used. The WCB believes this is appropriate given that the revisions are intended to maintain the status quo, and do not change any current requirements.

## **2. Background**

### **What are “principals” “contractors” and “subcontractors”?**

#### Ordinary use

In its ordinary use, as reflected in commonly used dictionaries<sup>3</sup>, the term contractor generally refers to a person or firm that undertakes a contract to provide materials or labour to perform a service, or do a job for another person or firm. A subcontractor is generally considered a person or firm that contracts to provide services and materials to fulfill another person or firm’s contract.

#### WCB context

In Nova Scotia, the WCB has traditionally considered any person to be a **contractor** of a principal where:

- they are hired to perform work or services for a principal. The work or services can be incidental or integral to the principal's business;
- there is a labour component to the work or services carried out. That is, there is physical effort used to perform the work. A business that simply supplies materials to another business is not considered a contractor; and
- some part of the labour component is carried out at the principal’s work site (or a site determined by the principal).

The terms contractor and subcontractor are often used interchangeably. A subcontractor, in the WCB context, is a person or firm hired by a contractor and has the same basic meaning as a contractor. They may carry out some part of the work the contractor has agreed to perform for the principal (as reflected in the ordinary use of the term). Or, they **may also perform other types of work for the contractor that supports the general operation of the contractor’s business**, and are not related to specific work the contractor is performing for a principal. In this instance they are more accurately considered a contractor.

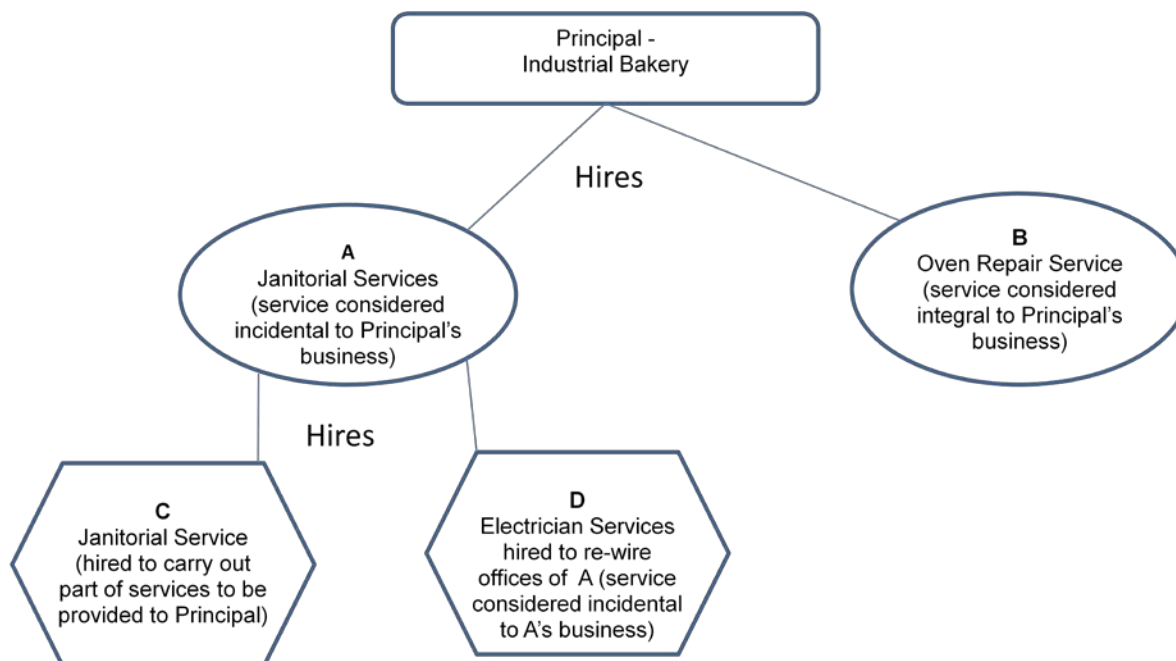
The WCB’s interpretation of the terms contractor and subcontractor are generally in keeping with those of other Canadian jurisdictions. Two key distinctions: 1) Three jurisdictions make mention of contractors performing work that is either in a “contract based industry” (MB) or for the purpose of an industry (NF and PE); 2) NB and YK make specific reference to the principal’s control over the location of the work performance. See Appendix A for more detailed information on how other WCB’s interpret the terms contractor and subcontractor.

See Figure 1 for an illustration of principal, contractor, and subcontractor relationships.

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<sup>3</sup> Oxford Dictionary, Collins English Dictionary, and Random House Kernerman Webster’s College Dictionary.

**Figure 1**  
**Principal, Contractor, and Subcontractor Relationships**



All of these persons or firms are considered either contractors or subcontractors under the WCB's traditional interpretation of the terms. Applying the more restrictive interpretation emerging from the Appeal System, it is likely A would not be considered a contractor of the principal and D would not be considered a contractor of A.

### **Legislation and Program Policy**

The *Act*, Regulations, and program policy establish requirements related to principals, contractors, and subcontractors. These requirements address, primarily, various aspects of liability for assessment premiums where a contractor/subcontractor relationship exists. The following are the key provisions, grouped according to topic, that would be most impacted by a more restrictive interpretation of the term contractor/subcontractor.

#### Deeming

Section 142(1) of the *Act* and *Policy 9.1.3 Coverage for Contractors and Subcontractors which Employ less than Three Workers* addresses the deeming of workers. The *Act* states the WCB may deem any worker of the contractor or a subcontractor to be a worker of the principal, or any

employee of the subcontractor to be a worker of the contractor. The WCB does this when a principal hires a contractor (or a contractor hires a subcontractor) that is not in “good standing”. That is, the contractor/subcontractor is not properly registered and not paying required assessment premiums to the WCB. The principal is then responsible for the labour portion of the value of the work performed by the contractor (or subcontractor as the case may be) and must include this in their assessable earnings.

Under *Policy 9.1.3*, the workers of a contractor with less than three workers in a mandatory industry are deemed (considered) to be the workers of the hiring principal (also in a mandatory industry) where the contractor has not purchased voluntary coverage. As these contractors have less than 3 workers, they would not otherwise be required to obtain compensation coverage. The principal is then required to pay assessment premiums on the labour portion<sup>4</sup> of the work or services performed for them by the contractor. At the time of its approval in 1999, this policy served to codify this decade’s long practice, with the intent of ensuring as much work activity as possible is covered by the *Act*<sup>5</sup> - workers have coverage and employers cannot be sued for the costs of a workplace injury. This approach is also used in the only other jurisdiction with a minimum worker rule (NB).

#### Liability for assessment premiums

Sections S. 140 and 141 of the *Act* specify liability for assessment premiums where a contractor relationship exists. Covered principals are liable for any assessment the WCB levies for any work performed for principals by covered contractors. The same is true for contractors who hire sub-contractors. The WCB has the authority to collect payment for the assessments from any or all of the parties – the principal, the contractor, or the sub-contractor. Principals and contractors may recover the amount of an assessment premium they were required to pay because the contractor or subcontractor they hired was not properly registered.

#### Holdbacks

Section 143 of the *Act* allows principal contractors to retain the applicable assessment premium as a ‘holdback’ from some of their contractors to safeguard against liability which may arise if the contractor has failed to maintain an account in good standing with the WCB (similarly, contractors can hold back from subcontractors). This protects the party from potential liability if assessments have not been paid to the WCB. *Policy 9.8.4 Holdback of Assessment Premium from Contractors and Subcontractors* specifies that a holdback is allowed where the contractor or subcontractor is within the mandatory scope of the *Act* or has purchased voluntary coverage pursuant to S. 4 of the *Act*. Principal contractors are not authorized to hold back from contractors who are deemed to be workers of the principal pursuant to *Policy 9.1.3*.

#### Reporting

*Policy 9.5.4R – Late Reporting of Year-End* requires covered employers to supply the WCB with a list reporting all contractors and subcontractors they have hired during the year. This report enables the WCB to determine the extent of joint premium liability of principals and contractors

<sup>4</sup> The policy lists percentages (varying depending on the industry) that may be used to calculate the labour percentage of the work carried out. Alternatively, the employer may choose to determine the actual labour percentage and use that to calculate the assessment premium owing.

<sup>5</sup> June 1999 background paper for policy prepared for the Board of Directors states “The purpose of deeming contractors to be workers is to ensure that as much work activity as possible on a job site is covered in case of an injury”.

under S. 140 and 141 of the *Act* if the WCB need to collect assessments that are in arrears. This reporting requirement also enables the WCB to monitor contractor reporting to ensure employers are correctly identifying which subcontractors are to be included in their assessable earnings. Approximately 2200 principals or contractors report hiring contractors/subcontractors every year. The report must be submitted to the WCB by the last day of March of each year. Late reports are subject to a \$50 penalty.

Please see Appendix B for relevant sections of the *Act* and *Regulations*.

### Recent Appeal System Developments

In a March 2012, a WCB Hearing Officer rendered a decision (in the absence of a definition in the *Act*, *Regulations*, or policy) where they interpreted the term contractor/subcontractor in a manner that is more restrictive than the WCB's traditional interpretation.

This decision was the result of a series of decisions related to an employer appeal of a WCB finding that several of the persons or firms they had hired were contractors. Under *Policy 9.1.3*, the employer would be liable for assessment premiums for the labour portion of the value of the work performed by these persons. WCAT, in an earlier Appeal Referral decision, had directed the WCB to explain the criteria that are applied when determining if a person or firm is a contractor/subcontractor. In considering this, Hearing Officer undertook an analysis of the nature of the services provided by the persons hired by the employer, and the strength of their connection to the employers "core" business.

The Hearing Officer (using the rules of statutory interpretation) came to the conclusion that a contractor/subcontractor provides **a service integral to the service being provided by the employer to the client**. As a result, most of the persons or firms hired by the employer that were the subject of the appeal were found to not be contracts/subcontractors. In a February 2013 decision, WCAT acknowledged the absence of a definition of the term contractor/subcontractor in the legislation or policy, and accepted the more restrictive interpretation of the terms.

### **3. Impact of Appeal System Developments and Rationale for Policy Revision**

Neither Hearing Officer nor WCAT decisions are precedent setting. However, the WCB recognizes that there is currently no definition of the terms discussed above. If no action is taken, the WCB believes the more restrictive interpretation arising from the Appeal System will "stick". This interpretation is likely to have the following impacts:

- Fewer workers will have workers' compensation coverage and fewer employers will be protected from the statutory bar against suit. This is because the WCB would not be able to deem as many workers under S. 142(1) or *Policy 9.1.3*. These workers would not have coverage and may be able to sue the hiring principal or contractor in the event of a workplace injury.
- Reduced capacity of the WCB to collect assessment premiums in arrears. As discussed previously, the WCB has the authority to collect payment for assessments owing from a principal, the contractor, or the sub-contractor in a business relationship. However, if a persons or firm hired by a covered employer is not considered a contractor or

subcontract, the WCB would not be able to collect assessments owing for them from the hiring employer.

- Fewer contractors will be reported to the WCB. This would limit the WCB's ability to audit for compliance with registration requirements.
- Employers will experience increased administrative burden. Currently, employers are not required to carry out an "integral test" on the persons or firms they hire to determine if they are contractors or subcontractors. This can become more complex where a person or firm has performed some work that was integral to the employer's business, and some that was not and the employer owes premiums for the contractor or subcontractor (e.g. they did not obtain a clearance letter or *Policy 9.1.3* is applicable).

It is for these reasons the WCB believes it is appropriate to clarify the meaning of the terms contractor and subcontractor in the following policies:

- *Policy 9.5.4R – Late Reporting of Year-End*
- *Policy 9.1.3 Coverage for Contractors and Subcontractors which Employ less than Three Workers*
- *Policy 9.8.4 Holdback of Assessment Premium from Contractors and Subcontractors*

While the policies are "open", it is also recommended housekeeping/plain language changes be made.

#### **4. Proposed Revisions to Contractor/Subcontractor Policies**

The following is an overview of the changes proposed to WCB contractor related policies. See Appendix C for copies of the proposed revisions with ~~strike-outs~~ and underlines to indicate changes, and Appendix D for final proposed policies without strikeouts and underlines.

##### ***Policy 9.5.4R – Late Reporting of Year-End***

###### **Definition of the term Contractor and Subcontractor**

The heart of this policy issue is the meaning of the terms "contractor" and "subcontractor". The WCB believes the best way to address the issue is to define the terms in program policy - in particular in *Policy 9.5.4R – Late Reporting of Year-End*. This policy has the broadest application of the contractor/subcontractor related policies.

The proposed definition represents the WCB's traditional, long-standing, interpretation of the terms. The proposed definitions are:

*"contractor" means a person hired by a principal to perform work or services that*

- i. include a labour component;*
- ii. are carried out at the principal's premises or worksite, or at a location determined by the principal; and*
- iii. are for the purposes of the principal's trade or business, including those that are integral or incidental to the operation of the principal's business;*



*but does not include those*

- iv. *whose sole function is to deliver goods or equipment to, or pick them up from, the principal's premises or worksite; or*
- v. *who perform all of the work or services at their own worksite.*

*“subcontractor” has the same meaning as contractor where the person or firm is hired by a covered employer who is a contractor.*

It is typical in workers' compensation, and WCB long-term practice, to require a person or firm to perform work or services that have a labour component at the hiring employer's worksite (or a site determined by the employer) for them to be considered a contractor or subcontractor. Otherwise, from a workers' compensation perspective, the hiring employer is not exercising any control over the work environment and it would not be appropriate for them to be in a position to potentially assume any assessment premium liability. This is also why the definition excludes persons or firms whose sole function is to deliver goods or equipment to (or pick them up from) the principal's premises or worksite and/or those who perform all of the work or services at their own worksite.

The other key piece of the definition clarifies that the work performed is not limited to that which is integral to the principal's business. It also includes work that is incidental, but still for the purposes of the principal's trade or business. This wording is intended to fill that gap identified by the Appeal System. This clarification is intended to ensure the traditional scope of application of contractor related provisions in the legislation and policy remains in place.

#### *Housekeeping changes*

Throughout the policy, it has been clarified that employers are required to report contractors and subcontractors. This is not a new requirement and in dealings with employers (e.g. opening new accounts) the WCB has always explained that both should be reported.

#### ***Policy 9.1.3 – Coverage for contractors and subcontractors which employ less than three workers***

##### *Definition of the term Contractor and Subcontractor*

The definition of the terms contractor and subcontractor are in *Policy 9.5.4R – Late Reporting of Year-End*. A statement has been added to Section 2. to ensure the same definition is used in the interpretation and application of this policy:

*Contractor and subcontractor have the same meaning as in Policy 9.5.4R-Late Reporting of Year – End.*

As well, the phrase “A covered employer which hires contractors for products and services is considered a principal contractor.” has been changed to “A covered employer which hires contractors ~~for products and services~~ is considered a principal contractor.” This is because the definition of contractor explains what a contractor is, and the nature of their services. As well, the *Act* uses the term “principal” not “principal contractor”.

### Deemed Workers

This section has been reorganized to improve clarity and make it clear that where a contractor with less than 3 workers has purchased voluntary coverage, the deeming requirements of *Policy 9.1.3* do not apply. As well, a new Section 4. has been added to replace the footnote previously in the Preamble. The change is as follows:

~~<sup>4</sup> Although this Policy describes the relationship between a principal contractor and contractor, the same rules apply to contractors and subcontractors.~~

*4. Workers of subcontractors with less than three workers hired by a covered contractor are deemed to be the workers of the contractor where both operate in an industry designated under the Workers' Compensation General Regulations as subject to mandatory coverage and the remaining criteria in Section 3 of this policy are met.*

The WCB believes this achieves the same intent in a more explicit manner.

### Determination of contractor's assessable earnings

This section has been reorganized to improve clarity through the use of tables and an example. As well, language that may have inferred that a formal contract was required has been removed.

### ***Policy 9.8.4 - Holdback of Assessment Premium from Contractors and Subcontractors***

#### Definition of the term Contractor and Subcontractor

As in *Policy 9.1.3*, a statement as been added to Section 2. to ensure the definition in *Policy 9.5.4R* is used in the interpretation and application of the policy. Like *Policy 9.1.3*, reference to contractor being hired "for products and services" has been removed and the phrase "principal contractor" replaced with "principal".

## **5. Providing Your Comments**

The WCB would like to hear stakeholders' views on the proposed minor policy changes to contractor related policies. The Board of Directors will consider the input received from stakeholders before making a final decision.

**If you would like to comment on the proposed policy change, please provide your feedback by July 5<sup>th</sup>, 2013 to:**

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## Appendix A

### Interpretation of term contractor/subcontractor in WCB's across Canada

Jurisdiction	Interpretation of term “contractor/subcontractor”
Alberta	Persons or firms that carry out work that generally supports the business of the principal.
British Columbia	Anyone hired by a firm to perform services or produce goods.
Manitoba	Persons or firms that add value to products or services of the principal in a “contract-based industry” (construction, trucking, logging, janitorial, oil and gas wells, tow trucks, etc.)
New Brunswick	Any company or individual, under the care and control of the employer, that provides the employer with a service.
Newfoundland	A person or firm that provides services that are part of the principal's primary industry.
Northwest Territories & Nunavut	Person or firm that performs work for the principal. The work does not necessarily have to be integral into the business of the principal.
Ontario	A person providing contractual services to a principal. Subcontractor provides services to a contractor. Subcontractors may also hire persons or firms and act as a principal.
Prince Edward Island	Persons or firms that perform work or provide materials for a principal that is for the purpose of an industry
Quebec	Person or firm that performs a specific work (physical or intellectual) that excludes the mere provision of materials or products.
Saskatchewan	A person or firm that operates a business and provides services to others, often using the contractor's own equipment and materials, in exchange for a predetermined payment.
Yukon	Person or firm that performs work on the site of the principal.

**\*Interpretations based on discussion with jurisdictional representatives, legislation, program policy, and public guidance documents.**

## Appendix B

### Relevant Sections of the *Act, Regulations, and Program Policy*

#### **Deemed worker**

**9** Notwithstanding the other provisions of this Part, where a person who is not a worker within the scope of this Part performs work for the benefit of another person, the Board may

- (a) deem the first person to be a worker and the second person to be the employer of the first person, within the meaning of this Part; and
- (b) determine an amount that shall be deemed to be the earnings of the worker, for the purpose of this Part. 1994-95, c. 10, s. 9.

#### **Contractor and principal liable for assessment**

**140 (1)** Where a contractor undertakes any work for a principal in an industry to which this Part applies, both the contractor and the principal are liable for any assessment the Board may levy in respect of any work performed for the principal by the contractor.

**(2)** The Board may collect any amount required to be paid pursuant to subsection (1) from the principal or the contractor, or partly from one and partly from the other.

**(3)** Where a principal has paid an assessment levied pursuant to subsection (1), the principal may recover the amount of the assessment from the contractor. 1994-95, c. 10, s. 140.

#### **Liability of subcontractor**

**141 (1)** Where a subcontractor undertakes any work for a contractor in any industry to which this Part applies

- (a) the subcontractor;
  - (b) the contractor; and
  - (c) the principal who is employing the contractor,
- are liable for any assessment the Board may levy in respect of any work performed for the contractor by the subcontractor.

**(2)** The Board may collect any amount required to be paid pursuant to subsection (1) from the principal, the contractor or the subcontractor, or partly from any one and partly from any other.

**(3)** Where a principal has paid an assessment pursuant to subsection (1), the principal may recover the amount of the assessment from the contractor or the subcontractor.

**(4)** Where a contractor has paid an assessment pursuant to subsection (1), the contractor may recover the amount of the assessment from the subcontractor. 1994-95, c. 10, s. 141.

#### **Board may deem workers**

**142 (1)** Where a contractor or subcontractor has not been assessed for any work carried on by the contractor or subcontractor, the Board may deem

- (a) any worker of the contractor or subcontractor to be a worker of the principal; or
- (b) any worker of the subcontractor to be a worker of the contractor.

**(2)** In the absence of any term to the contrary in the contract or subcontract

- (a) the principal may recover from the contractor the amount or proportionate part of the assessment paid by the principal with respect to the contractor or the contractor's workers or with respect to the subcontractor or the subcontractor's workers; and

(b) the contractor may recover from the subcontractor the amount or proportionate part of the assessment paid by the contractor with respect to the subcontractor or the subcontractor's workers. 1994-95, c. 10, s. 142.

### **Holdbacks and set-offs**

**143 (1)** Where a principal is or may become liable for an assessment levied against any contractor carrying out work for the principal, the principal may withhold from any amount owed to the contractor an amount estimated by the Board to be equal to the amount of the assessment.

**(2)** Where a contractor is or may become liable for an assessment levied against any subcontractor carrying out work for the contractor, the contractor may withhold from any amount owed to the subcontractor an amount estimated by the Board to be equal to the amount of the assessment.

**(3)** In any action that

(a) a contractor may bring against the principal; or

(b) a subcontractor may bring against a contractor,

the defendant may set off the amount of an assessment paid pursuant to subsection (2) against the plaintiff's claim.

**(4)** Where, pursuant to subsection (3), a defendant has set off the amount of the assessment,

(a) the Board shall determine and collect the amount of assessment due to it; and

(b) the plaintiff is entitled to the remaining amount of the ~~set-off~~ [set-off].

**(5)** The amount of any holdback made pursuant to subsection (1) or (2) is deemed to be held in trust for the Board. 1994-95, c. 10, s. 143.

### ***Workers' Compensation General Regulations***

#### **Scope of coverage - exclusion of classes of workers**

**9 (1)** The following persons are excluded from the Act:

(a) persons whose employment is of a casual nature when they are employed otherwise than for the purposes of the employer's trade or business;

(b) outworkers;

(c) persons employed by a city, town or municipal corporation as members of a police force or the fire department; and

(d) farm labourers or domestic or menial servants or their employers.

**(2)** In this Section, "outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in the person's own home or on other premises not under the direct or indirect control or management of the person who gave out the articles or materials.

**16** Where a business or undertaking is being carried on

(a) partly by the employer and partly by one or more contractors; or

(b) entirely by two or more contractors of an employer,

the business or undertaking is not excluded from the application of the Act after the time three or more workers are at the same time employed in the business or undertaking.

## Appendix C

### Drafts of Proposed Revisions to Contractor Policies

Deletions represented by ~~strikeouts~~ and additions by underline.

# ***POLICY***

<b>NUMBER:9.1.3<u>R</u></b>
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Effective Date: XXXXXXXXXXXXX

**Topic: Coverage for  
contractors and  
subcontractors which  
employ less than three  
workers**

Date Issued: XXXXXXXXXXXXX

Section: Assessments and  
Collections

Date Approved by Board of Directors: XXXXXXXXXXXXX      Subsection: Scope of Coverage

## **PREAMBLE**

1. The *Workers' Compensation Act* requires employers which employ three or more workers, and which operate in industries designated by Regulation as subject to mandatory registration, to register for coverage. Employers within the scope of mandatory coverage under the Act are referred to as covered employers.
2. A covered employer which hires contractors for ~~products and services~~ is considered a principal ~~contractor~~. A covered employer who is a contractor may hire ~~products or services~~ from subcontractors<sup>1</sup>. Contractor and subcontractor have the same meaning as in Policy 9.5.4R-Late Reporting of Year – End.

<sup>1</sup>Although this Policy describes the relationship between a principal ~~contractor and contractor~~, the same rules apply to ~~contractors and subcontractors~~.

## **POLICY STATEMENT**

### Deemed Workers

3. Where a contractor with less than 3 workers is hired by a principal, the workers of the contractor are deemed to be the workers of the principal if the following criteria are met:
- a. Both the principal and the contractor operate in an industry designated under the *Workers' Compensation General Regulations* as subject to mandatory coverage;
  - b. The contractor has not purchased voluntary compensation coverage;
  - c. The principal has three or more workers;
4. Workers of subcontractors with less than three workers hired by a covered contractor are deemed to be the workers of the contractor where both operate in an industry designated under the *Workers' Compensation General Regulations* as subject to mandatory coverage, and the remaining criteria in Section 3 of this policy are met.

~~If a principal contractor with greater than three workers hires a contractor with less than three workers, and both the principal and the contractor operate in an industry designated under the *Workers' Compensation General Regulations* as subject to mandatory coverage, the workers and the contractor will be considered workers of the principal.~~

- ~~4. If the contractor operates in an industry excluded from mandatory coverage under the Regulations, the contractor and the workers of the contractors will **not** be considered workers of the principal contractor.~~

### Determination of contractor's assessable earnings

5. To determine the contractor's (or subcontractor's) assessable earnings the principal (or contractor) ~~contractor~~ must calculate the labour portion of the work or services performed ~~contract~~. The labour component is determined by subtracting ~~a proxy the amount~~ value of materials and equipment from the gross amount of the contract. work or services performed. The amount remaining is the labour portion of the work or services.
6. Where the exact value of materials and equipment is not known, a proxy amount for labour specified in the table below must be used.

<b>Type of work/service</b>	<b>Proxy</b>
Labour and Materials	50%
Logging (chain saw):	75%
Courier Service	50%
Trucking and Leased Equipment	25%
Labour only	100%

Example:

Type	Total value of work or services performed	Proxy	Value of labour
Logging (chain saw)	\$500	75%	\$375

5. ~~To determine the contractor's assessable earnings the principal contractor must calculate the labour portion of the contract. The labour component is determined by subtracting a proxy amount for materials and equipment from the gross amount of the contract.~~
6. ~~The following percentages, or the actual percentages, at the option of the payer, are to be used to calculate the labour portion of a contractor's earnings:~~
- ~~ii) Labour and Materials: 50%~~
  - ~~ii) Logging (Chain Saw): 75%~~
  - ~~iii) Courier Service: 50%~~
  - ~~iv) Trucking and Leased Equipment: 25%~~
  - ~~v) all others: 100%~~

**APPLICATION**

This Policy applies to all decisions made on or after XXXXXXXXXXXXX

**REFERENCES**

Workers' Compensation Act (Chapter 10, Acts of 1994-95), (as amended) Sections 9, 125.  
Workers' Compensation General Regulations, Section 15.



# POLICY

<b>NUMBER:9.5.4R1</b>
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Effective Date: TBD

**Topic: Late Reporting of Year-end Subcontractor Contractor and Subcontractor Report**

Date Issued: TBD

Section: Assessments and Collections

Date Approved by Board of Directors: TBD

Subsection: Penalties

## POLICY STATEMENT

1. Where a covered employer has hired contractors or subcontractors during the year, a listing of all contractors or subcontractors hired by the employer must be submitted to the WCB by the last day of March following the assessment year.
2. Employers who fail to report contractor or subcontractor information to the Workers' Compensation Board by the last day of March following the assessment year, shall be levied a \$50 charge.

### Definitions

"contractor" means a person hired by a principal to perform work or services that

- vi. include a labour component;
- vii. are carried out at the principal's premises or worksite, or at a location determined by the principal; and
- viii. are for the purposes of the principal's trade or business, including those that are integral or incidental to the operation of the principal's business.;

but does not include those

- ix. whose sole function is to deliver goods or equipment to, or pick them up from, the principal's premises or worksite; or
- x. who perform all of the work or services at their own worksite.

"subcontractor" has the same meaning as contractor where the person or firm is hired by a covered employer who is a contractor.

**APPLICATION**

This Policy applies to the ~~'Year-end Subcontractor Reports'~~ contractor or subcontractor reporting for the year 2004-XXX onward.

**REFERENCES**

**Workers' Compensation Act** (Chapter 10, Acts of 1994-95), (as amended), Section 129, 208, **Policy 9.1.3.**

# POLICY

<b>NUMBER:9.8.4R1</b>
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Effective Date: January 1, 2000

**Topic: Holdback of  
Assessment Premium  
From Contractors  
and Subcontractors**

Date Issued: January 31, 2000

Section: Assessments and  
Collections

Date Approved by Board of Directors: June 29, 2000

Subsection: General

## PREAMBLE

1. The *Workers' Compensation Act* required employers which employ three or more workers, and which operates in industries designated by Regulation as subject to mandatory registration, to register for coverage. Employers within the scope of mandatory coverage under the Act are referred to as covered employers.
2. A covered employer which hires contractors ~~for products and services~~ is considered a principal ~~contractor~~. A covered employer who is a contractor may hire ~~products or services~~ from subcontractors<sup>1</sup>. Contractor and subcontractor have the same meaning as in Policy 9.5.4R-Late Reporting of Year – End.
3. Section 143 of the *Workers' Compensation Act* allows principals ~~contractors~~ to retain the applicable assessment premium as a 'holdback' from some of their contractors to safeguard against liability which may arise if the contractor has failed to maintain an account in good standing with the WCB (similarly, contractors can hold back from subcontractors). This protects the party from potential liability if assessments have not been paid to the *Workers' Compensation Board (WCB)*.

## POLICY STATEMENT

4. A hold-back is allowed under section 143 if
  - a) The contractor or subcontractor is within the mandatory scope of the *Workers' Compensation Act* (has three or more workers and is in a mandatory industry); or
  - b) The contractor is admitted under the *Act* through voluntary coverage pursuant to section 4;
5. Principals ~~contractors~~ are not authorized to hold back from contractors who are 'deemed to be workers' of the principal as per **Policy 9.1.3**.

**APPLICATION**

This Policy applies to all decisions made on or after XXXXXXXXXXXXXXXX

**REFERENCES**

[Workers' Compensation Act](#) (Chapter 10, Acts of 1994-95), (as amended), Sections 4, 143.

**Appendix D**

**Final Proposed Revisions to Contractor Policies**

**(no strikeouts and additions by underline)**

# POLICY

<b>NUMBER:9.1.3R</b>
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Effective Date: XXXXXXXXXXXXX

**Topic: Coverage for  
contractors and  
subcontractors which  
employ less than three  
workers**

Date Issued: XXXXXXXXXXXXX

Section: Assessments and  
Collections

Date Approved by Board of Directors: XXXXXXXXXXXXX      Subsection: Scope of Coverage

## PREAMBLE

1. The *Workers' Compensation Act* requires employers which employ three or more workers, and which operate in industries designated by Regulation as subject to mandatory registration, to register for coverage. Employers within the scope of mandatory coverage under the Act are referred to as covered employers.

2. A covered employer which hires contractors is considered a principal. A covered employer who is a contractor may hire subcontractors<sup>1</sup>. *Contractor and subcontractor have the same meaning as in Policy 9.5.4R-Late Reporting of Year – End.*

## POLICY STATEMENT

### Deemed Workers

3. Where a contractor with less than 3 workers is hired by a principal, the workers of the contractor are deemed to be the workers of the principal if the following criteria are met:

- a) Both the principal and the contractor operate in an industry designated under the *Workers' Compensation General Regulations* as subject to mandatory coverage;
- b) The contractor has not purchased voluntary compensation coverage;
- c) The principal has three or more workers.

4. Workers of subcontractors with less than three workers hired by a covered contractor are deemed to be the workers of the contractor where both operate in an industry designated under the *Workers' Compensation General Regulations* as subject to mandatory coverage, and the remaining criteria in Section 3 of this policy are met.

### Determination of contractor's assessable earnings

5. To determine the contractor's (or subcontractor's) assessable earnings the principal (or contractor) must calculate the labour portion of the. The labour component is determined by subtracting the value of materials and equipment from the gross amount of work or services performed. The amount remaining is the labour portion of the work or services.

6. Where the exact value of materials and equipment is not known, a proxy amount specified in the table below amount must be used.

<b>Type of work/service</b>	<b>Proxy</b>
Labour and Materials	50%
Logging (chain saw):	75%
Courier Service	50%
Trucking and Leased Equipment	25%
Labour only	100%

Example:

<b>Type</b>	<b>Total value of work or services performed</b>	<b>Proxy</b>	<b>Value of labour</b>
Logging (chain saw)	\$500	75%	\$375

### **APPLICATION**

This Policy applies to all decisions made on or after XXXXXXXXXXXXX

### **REFERENCES**

Workers' Compensation Act (Chapter 10, Acts of 1994-95), (as amended) Sections 9, 125.  
Workers' Compensation General Regulations, Section 15.

# ***POLICY***

<b>NUMBER:9.5.4R1</b>
-----------------------

Effective Date: TBD

**Topic: Late Reporting of Year-end Contractor and Subcontractor Report**

Date Issued: TBD

Section: Assessments and Collections

Date Approved by Board of Directors: TBD

Subsection: Penalties

## **POLICY STATEMENT**

1. Where a covered employer has hired contractors or subcontractors during the year, a listing of all contractors or subcontractors hired by the employer must be submitted to the WCB by the last day of March following the assessment year.
2. Employers who fail to report contractor or subcontractor information to the Workers' Compensation Board by the last day of March following the assessment year, shall be levied a \$50 charge.

### **Definitions**

“contractor” means a person hired by a principal to perform work or services that

- i) include a labour component;
- ii) are carried out at the principal's premises or worksite, or at a location determined by the principal; and
- iii) are for the purposes of the principal's trade or business, including those that are integral or incidental to the operation of the principal's business.;

but does not include those

- iv) whose sole function is to deliver goods or equipment to, or pick them up from, the principal's premises or worksite; or
- v) who perform all of the work or services at their own worksite.

“subcontractor” has the same meaning as contractor where the person or firm is hired by a



covered employer who is a contractor.

#### **APPLICATION**

This Policy applies to contractor or subcontractor reporting for the year XXX onward.

#### **REFERENCES**

**Workers' Compensation Act** (Chapter 10, Acts of 1994-95), (as amended), Section 129, 208, **Policy 9.1.3.**

# POLICY

<b>NUMBER:9.8.4R</b>
----------------------

Effective Date: January 1, 2000

**Topic: Holdback of  
Assessment Premium  
From Contractors and  
Subcontractors**

Date Issued: January 31, 2000

Section: Assessments and  
Collections

Date Approved by Board of Directors: June 29, 2000

Subsection: General

## PREAMBLE

1. The *Workers' Compensation Act* required employers which employ three or more workers, and which operates in industries designated by Regulation as subject to mandatory registration, to register for coverage. Employers within the scope of mandatory coverage under the Act are referred to as covered employers.
2. A covered employer which hires contractors is considered a principal. A covered employer who is a contractor may hire subcontractors<sup>1</sup>. *Contractor and subcontractor have the same meaning as in Policy 9.5.4R-Late Reporting of Year – End.*
3. Section 143 of the *Workers' Compensation Act* allows principals to retain the applicable assessment premium as a 'holdback' from some of their contractors to safeguard against liability which may arise if the contractor has failed to maintain an account in good standing with the WCB (similarly, contractors can hold back from subcontractors). This protects the party from potential liability if assessments have not been paid to the *Workers' Compensation Board (WCB)*.

## POLICY STATEMENT

4. A hold-back is allowed under section 143 if
  - a) The contractor or subcontractor is within the mandatory scope of the *Workers' Compensation Act* (has three or more workers and is in a mandatory industry); or
  - b) The contractor is admitted under the *Act* through voluntary coverage pursuant to section 4.
5. Principals are not authorized to hold back from contractors who are 'deemed to be workers' of the principal as per [Policy 9.1.3](#).

## APPLICATION

This Policy applies to all decisions made on or after XXXXXXXXXXXXXXXX

## REFERENCES

[Workers' Compensation Act](#) (Chapter 10, Acts of 1994-95), (as amended), Sections 4, 143.