

Client Services Procedure Manual

Procedure: 101.00

Subject: Coverage under the Workplace Health, Safety and Compensation Act

101.01 Introduction

Employers in industries covered by the Workplace Health, Safety and Compensation Act (the Act) must establish an account with WorkplaceNL to insure their workers. The Act applies to almost all industries in the Province of Newfoundland and Labrador. The only exceptions are those industries excluded by the Workplace Health, Safety and Compensation Regulations CNLR 1025/96 (the Regulations).

This procedure is intended to clarify coverage as related to employers and workers covered by the Act.

101.02 Definitions of Employer and Worker

Employer: Section 2(j)(i) of the Act, defines an employer as “a person having in his or her service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in a work in or about an industry within the scope of this Act.”

In general, an employer is a person or entity employing one or more workers. This includes individuals, principals, businesses, governments, associations, fishing and logging enterprises or corporations, and may apply to contractors and subcontractors.

Worker: Section 2(z) of the Act defines a worker as “a person who has entered into or works under a contract of service or apprenticeship with an employer.” This includes learners, part-time or casual workers, professionals, executive officers, management and directors of an employer.

Those involved in the fishing and logging industries are also included in the definition of a worker. This includes a person who is a member of the crew or employed on a boat, vessel or ship in the industry of fishing, whaling or sealing, as well as those involved with timber harvesting (cutters or loggers) and timber processing.

WorkplaceNL has exclusive jurisdiction to determine who is a worker for the purposes of the Act.

101.03 Types of Employers

An employer is a person or entity employing one or more workers. The employer may be a sole proprietor, a partnership, a corporation, or another type of legal entity in an industry within the scope of the Act. An employer may also be a contractor who employs workers. Outlined below are descriptions of some of the more common forms of business organizations. As employers, these businesses are required to register and pay assessments under the Act. Even if they only subcontract work, they must register and report payments made to contractors.

Corporations

A corporation is a legal entity that exists separately and distinctly from its owners. A corporation may be an entity incorporated under the Corporations Act and registered through the Registry of Companies in St. John's, or federally through the Registrar of Companies in Ottawa. A firm that is not incorporated either in Newfoundland and Labrador, or federally in Canada, but claims to be incorporated in another jurisdiction, will be handled as if the firm is legally incorporated in Newfoundland and Labrador. An incorporated company may be identified as "Ltd.", "Limited", "Inc.", "Incorporated", "Corp." or "Incorporation".

A corporation as an entity is responsible for the liabilities of the business. If the corporation is unable to meet the liabilities of the business, the directors of the corporation may become jointly and individually liable for any outstanding liabilities.

Executive officers, directors, active shareholders, management or any other individual who is active in the operation of the corporation may be considered a worker.

Proprietorship/Partnership

A proprietorship is an individually operated and unincorporated business in an industry within the scope of the Act. The proprietor is the person that is fully responsible for the liabilities of the business.

A partnership exists when two or more individuals join together to operate an unincorporated business in an industry. Each partner is responsible for the liabilities of the business. This means that each partner is responsible for and must assume the consequences of the actions of the other partner(s).

Proprietors and partners of an unincorporated business are employers if the business has workers. The Act does not cover the owner of an unincorporated business unless that individual purchases coverage through special application. Specific details on this type of coverage can be found in Procedure 103.00, Optional Personal Coverage and Householder Coverage.

Association/Society

Associations and societies may also be employers. This includes non-profit organizations that employ workers, casual workers, managers, executive officers, etc.

Limited Partnership

General partners make up the operating entity of the partnership and carry the primary liability for the debts incurred by the business. **Limited partners** invest in the business, do not contribute services to the operation of the partnership and are not liable for the debts of the partnership.

For registration purposes, the general partners are responsible for payment of assessments and to fulfill all other employer obligations under the Act. Limited partners would not be considered workers or employers, as their role is confined to investment only and they are not permitted to participate in the business. However, if they become active in the business they will be regarded as general partners, and as such would be subject to the provision of the Act.

101.04 Unpaid Workers

A worker includes an individual who receives remuneration for work or services performed for an employer in an industry within the scope of the Act. Volunteers or other persons not receiving payment

for their services are generally not considered workers. Exceptions to this include students on a work training program, learners, volunteer firefighters, volunteer ambulance service members and certain search and rescue volunteers. Unpaid active directors are also an exception, as outlined in Section 101.05 of this procedure.

Students on a Work Training Program

In accordance with Section 16(2)(a)(b) of the Regulations, “work training program means work of a type, whether or not the Act applies to that work, that is designated by the authorities of an educational institution as being suitable for student training; and for which the student is not compensated by the employer.”

A student is considered to be a worker employed by the Province while participating in a work training program with an educational institution named in the Regulations.

The following educational institutions are listed under Section 16 of the Regulations:

- Memorial University of Newfoundland;
- College of the North Atlantic;
- Centre for Nursing Studies, Health Care Corporation of St. John’s;
- Western Regional School of Nursing, Western Health Care Corporation; and
- A school as defined by the Schools Act, 1997.

In order to qualify for benefits under the Act a student on an unpaid work training program must also be fifteen years of age or over, unless the Minister of Advanced Education and Skills has requested otherwise. If a student qualifying for benefits is injured while working in a training program the amount of compensation will be based on the current rate paid to a worker doing the same or similar work, subject to a maximum as set by WorkplaceNL.

Learners

Learners are individuals who have an agreement with an employer under the Act to be trained in an industry with the condition that upon successful completion of the training, the employer will then hire that individual as a worker. During the training period the learner does not receive remuneration, but is subject to the risks of the industry.

Learners are not students and they are not under a contract of service or apprenticeship. WorkplaceNL will extend coverage under these circumstances to a learner who is not being paid a wage.

Volunteer Firefighters

Volunteer firefighters are considered workers under the Act when WorkplaceNL admits their fire department for coverage under the Act.

In this situation the municipality that makes the application for admission of the fire department or brigade is considered to be the employer.

Coverage for volunteer firefighters is in effect during the course of their employment as a volunteer firefighter. This is from the time they leave their residence or place of employment to respond to an

emergency call, until they have completed those activities to respond to that emergency call and return to their residence or ordinary place of employment. Other activities in the course of their employment as a volunteer firefighter may include: repairing and maintaining firefighting equipment on the premises of the fire department or brigade; attending educational and training sessions sanctioned by the Office of the Fire Commissioner; or any other duties and responsibilities assigned by the employer.

Fundraising activities on behalf of the fire department or brigade are not considered within the course of employment and coverage is not in effect during these activities.

The Department of Justice and Public Safety, Fire and Emergency Services – Newfoundland and Labrador (FES – NL) is responsible for reporting the number of volunteers and paying assessments to WorkplaceNL annually. Assessments are based on a flat rate for each volunteer firefighter.

Volunteer Ambulance Service Personnel

Volunteer ambulance service personnel are considered workers when designated by an official of the Department of Health and Community Services.

In this situation the municipality or independent community volunteer ambulance service that makes the application for admission of the service is considered the employer.

Coverage for volunteer ambulance service members is in effect during the course of their employment as a volunteer ambulance service member. This is from the time they leave their residence or place of employment to respond to an emergency call and return to their residence or ordinary place of employment. Other activities in the course of their employment as a volunteer ambulance service member may include: repairing and maintaining ambulance or other equipment related to the ambulance service; attending educational and training sessions which have been sanctioned by the Department of Health and Community Services; or any other duties assigned by their employer.

Fundraising activities on behalf of the ambulance service are not considered within the course of employment and coverage is not in effect during these activities.

The Department of Health and Community Services will report the number of volunteers to WorkplaceNL annually. The Department of Health and Community Services is responsible for paying the assessments, which are based on a flat rate for each volunteer ambulance worker.

Volunteer Search and Rescue Members

Volunteer search and rescue members of the Civil Air Search and Rescue Association of Newfoundland and Labrador (CASARA-NL) and the Newfoundland and Labrador Search and Rescue Association Inc. (NLSARA) are considered workers when designated by an official of the Department of Justice.

Coverage for volunteer search and rescue members is in effect during the course of their employment when they are called upon by the Royal Newfoundland Constabulary (RNC) or the Royal Canadian Mounted Police (RCMP). Coverage is in effect from the time they leave their residence or place of employment to respond to an emergency call, until they have completed those activities.

Other activities in the course of their employment as a volunteer search and rescue member include: carrying out search and rescue activities; evidence searches on behalf of the RNC or RCMP; and attending educational and training sessions which have been sanctioned by the RNC or the RCMP.

Fundraising activities on behalf of CASARA-NL and the NLSARA are not considered within the course of employment and coverage is not in effect during these activities.

The Department of Justice and Public Safety is considered to be the employer and only those workers who are designated by the Department of Justice and Public Safety will be considered workers. The Department of Justice and Public Safety will report to WorkplaceNL annually the names of the members of NLSARA and CASARA-NL that have been designated as workers, and therefore eligible for coverage under this provision.

Auxiliary Constables

Auxiliary constables of the Royal Canadian Mounted Police (RCMP) are considered workers when designated by an official of the Department of Justice and Public Safety.

Coverage for auxiliary constables is in effect during the course of their employment when they are called upon by the RCMP to perform the duties and responsibilities of an auxiliary constable. Auxiliary constables are also covered while attending educational and training sessions which have been sanctioned by the RCMP.

The Department of Justice and Public Safety is considered to be the employer and only those workers who are designated by Department of Justice and Public Safety will be considered workers. The Department of Justice and Public Safety will report to WorkplaceNL annually the names of the RCMP auxiliary constables that have been designated as workers, and therefore eligible for coverage under this provision.

101.05 Active Directors

Under Section 2(z)(iv) of the Act, it states that a worker includes “an executive officer, manager or director of an employer.”

Directors may be entitled to benefits under the Act if they are active in the operation of the employer’s business. This does not necessarily mean they are receiving remuneration for that activity. An active director means a director who is involved in the affairs of the business, such as allocating workloads, approving payments, overseeing purchases or sales, acting in a personnel capacity, engaging in the employer’s industry, or any other activity that would be the responsibility of a director, such as having signing authority for the company. The issuance of a T4 to a director is also a clear indicator that the director is active in the business.

101.06 Workers Engaged Outside of Newfoundland and Labrador

Section 51 of the Act provides for compensation to a worker of an employer in Newfoundland and Labrador who is injured outside the Province in the course of their employment.

WorkplaceNL assesses the factors below and may take others into consideration at the time of inquiry in order to extend coverage or accept a claim under Section 51. WorkplaceNL considers whether or not:

- The work outside Newfoundland and Labrador is of a temporary nature
- The employer has a permanent place of business in the other jurisdiction.
- The employer continues to employ workers in the province while a worker is employed outside the province.
- The worker remains on the payroll of the employer in Newfoundland and Labrador while employed outside the province and assessments are paid on those earnings.
- The worker will continue to work for the employer upon their return to Newfoundland and Labrador.
- The worker or his dependents are not entitled to compensation under the law of the place where the injury occurs.

Please refer to Procedure 104.00, Out of Province Coverage, for additional information.

As per Section 6(2) of the Regulations, commercial fishers are excluded from Section 51 of the Act. For further details on coverage for commercial fishers see Procedure 404.00, The Fishing Industry.

The employer should always inquire in the other jurisdiction regarding their requirements to register there. When the employer is required to pay assessments in the other jurisdiction and the worker is entitled to compensation in the other jurisdiction, the employer is not required to report the payroll assessed in the other jurisdiction or pay assessments on this payroll to WorkplaceNL.

101.07 Exclusions from Coverage

There are industries, employers and workers that are excluded from the Act by regulation. Exclusions indicated in Section 4 of the Regulations are detailed below. WorkplaceNL may also exclude, through regulation, industries, employers or workers in addition to those indicated in Section 4 of the Regulations. WorkplaceNL may consider coverage for exclusions upon application.

Construction/Renovation of a Private Residence

Under Section 4(a) of the Regulations, “employment by a person in respect of construction or renovation of a private residence, where the residence is or shall be used as a private residence of that person” is excluded from the application of the Act.

Workers of contractors retained by private residents will continue to be covered in accordance with the Act. Only workers employed directly by the private resident are excluded under this regulation.

If coverage is desired, either the individual performing the work or the private resident may make application to WorkplaceNL for coverage in one of two ways:

1. The individual performing the work may apply for optional personal coverage; or
2. The private resident may purchase householder coverage.

In cases where an employer assigns their regular workers (i.e. workers who were employed during the regular course of the employer's business, prior to the construction/renovation of the private residence) to work on their own private residence, the following applies:

- Where a non-incorporated employer with a construction rate classification employs their regular workers on the owner's private residence, WorkplaceNL will extend coverage for the employer's workers; however, under no circumstances will the proprietor/partner(s) be covered while working on the property, even if optional personal coverage is in effect.
- Where an incorporated employer with a construction rate classification employs its regular workers on the owner's/director's private residence, WorkplaceNL will extend coverage for the employer's workers; however, under no circumstances will the owner/director be covered while working on the property.
- Where a non-incorporated or incorporated employer with a non-construction rate classification employs their regular workers on the owner's/director's private residence, as defined in Regulation 4(a), a separate account for construction will be established, provided the criteria for multiple classifications are met.

Employment in a Private Residence

Under Section 4(b) of the Regulations, "employment by a person in respect of a function in a private residence of that person" is excluded from application of the Act.

This means that an individual who is hired by a private resident to do work in or on the resident's property is not eligible for coverage under the Act, and the resident is not protected from liability under the Act. Examples may include childcare providers, house cleaners or homecare workers.

If coverage is desired either the individual performing the work or the private resident may make application to WorkplaceNL for coverage in one of two ways:

1. The individual performing the work may apply for optional personal coverage; or
2. The householder may purchase householder coverage.

There are instances when a government department, government appointed agency or private business administers funds on behalf of a private resident (e.g. issues pay cheques, remits deductions and/or issues T4's). Regardless of the funding source, Section 4(b) of the Regulations would still apply, as long as the private resident has control of the employment relationship in terms of hiring, supervising, etc. WorkplaceNL will review the situation, if necessary, to determine whether or not the work falls under this regulation.

This regulation does not mean that all providers of homecare, childcare, etc. are not covered under the Act. For example, workers employed by homecare or childcare businesses, who have entered into a worker/employer relationship with the business, are considered workers under the Act. Employers must register and pay assessments on the earnings of workers in these businesses.

Professional Sports Competitors

Under Section 4(c) of the Regulations, professional sports competitors are excluded from the application of the Act.

This regulation does not exclude paid coaches, instructors, trainers or office staff of sports organizations from compulsory coverage under the Act. These workers are to be covered and assessments must be paid on their earnings by the employer.

Reference: Workplace Health, Safety and Compensation Act, Sections 2(j), 2(l)(i), 2(n), 2(z), 19(i), 19(j), 38, 40, 42, 48, 51, 101, 104, and 114
Workplace Health, Safety and Compensation Regulations, Sections 4, 6(2), 14, 15, and 16
Procedures: 103.00, Optional Personal Coverage and Householder Coverage
104.00, Out of Province Coverage
404.00, The Fishing Industry

Amendment History

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