

# Independent Operators and the responsibilities of principals under the Workplace Safety and Insurance Act, 1997

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## Who are independent operators?

Under the Workplace Safety and Insurance Act, 1997 (WSIA), a “worker” includes anyone employed under a contract of service or apprenticeship with an employer carrying on a business listed in Schedule 1 or Schedule 2 of the WSIA. A worker performs work for an employer in return for wages or a salary. The employer has control over the work, as well as where, when and how it is done. Workers are automatically covered under the WSIA and are entitled to WSIB benefits if they are injured at work or become ill because of their work.

On the other hand, people who work under contracts for service and do not employ any workers, are considered “independent operators” (IOs). An IO agrees to do specific work in return for payment. The payer does not necessarily control the way in which the work is done, or the times and places it is done.

## How do I make sure an independent operator (IO) I hire is not treated as a worker by the Workplace Safety and Insurance Board (WSIB)?

You must follow WSIB procedure. If you don't, the WSIB may deem the IO to be your worker, and require that premiums be paid on the labour portion of the contract with the IO.

## How does the WSIB determine whether an individual is an IO?

The WSIB has five industry-specific questionnaires (for construction, trucking, taxis, couriers and logging) and a general questionnaire for individuals working in all other industries. These questionnaires are on the WSIB's website at: [www.wsib.on.ca/wsib/wsibsite.nsf/public/FormsEmployers](http://www.wsib.on.ca/wsib/wsibsite.nsf/public/FormsEmployers) The questionnaires capture the core elements of business relationships in the respective industries. They incorporate the principles of an organizational test to help determine whether someone is a worker in an employer's organization, or an IO running his/her own business.

Both the principal and the IO must complete and sign the appropriate questionnaire, and submit it to the WSIB. WSIB decision-makers review the questionnaire and any other information that is relevant to the terms and conditions for service, i.e., invoices, contracts, purchase orders, business cards, etc. When all of the criteria considered together indicate the person has a separate business that is not integrated into the employer's business, the WSIB considers that person to be an IO. If, however, the WSIB decides the person does not have a lot of independence in doing the work and that his/her decisions have an insignificant effect on his/her opportunity to earn a profit or suffer a loss, it considers that person to be a worker. The questionnaire is necessary even if the IO is incorporated.

## What should I do?

You should fill out and submit a questionnaire if you are planning to hire an IO, before the IO does any contract work for you. If the WSIB concludes the person is a worker, you will need to pay premiums to the WSIB for that worker's wages and comply with all other WSIB policies. If the person is an IO, there are two things you need to do to protect yourself and your business from financial risk.

Ask the IO if he/she has purchased optional insurance from the WSIB. If the answer is “yes,” get a clearance certificate. A clearance certificate is a document issued by the WSIB confirming the IO is registered with the WSIB and has met all payment and reporting obligations. It waives the WSIB’s right to hold the principal responsible for any premiums charged to the IO’s WSIB account during the time the clearance certificate is valid. An IO (or his/her dependants) who has WSIB coverage also cannot sue you as a result of a workplace injury, illness or death.

You should get a new clearance certificate every 60 days as they expire after that time. Keep all clearance certificates during the WSIB audit period which is the current year plus two years.

## **Who can I call if I have questions?**

If you have any questions about your rights or responsibilities under the WSIA, call the Office of the Employer Adviser (OEA) to receive free, independent and confidential advice. You can reach us at 1 800 387-0774 or 416 327-0020. You can also send us your questions by e-mail at [askoea@ontario.ca](mailto:askoea@ontario.ca) and sign up for our electronic newsletter by sending an e-mail to [oeanews@ontario.ca](mailto:oeanews@ontario.ca)

The Office of the Employer Adviser is an independent agency of the Ontario Ministry of Labour. It provides free information and advice to all employers about workplace safety and insurance issues, and free representation at the WSIB and the Workplace Safety and Insurance Appeals Tribunal (WSIAT) primarily for employers with fewer than 100 employees. Visit us on the web at: [www.employeradviser.ca](http://www.employeradviser.ca)

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