

**Alberta WCB
Policies &
Information**

Chapter:

**INSURANCE COVERAGE FOR WORKERS AND
EMPLOYERS**

Subject:

EMPLOYERS AND WORKERS

Authorization:

BoD Resolution 2020/05/17

Date:

November 24, 2020

APPLICATION 2: EMPLOYERS

1. *Who is an employer under the WCA?*

Section 1(1)(j) of the *WCA* defines employer as:

- an individual, firm, association, body or corporation that has, or is deemed by the Board or the *WCA* to have, one or more workers in the individual's or its service and includes a person considered by the Board to be acting on behalf of that individual, firm, association, body or corporation,
- a proprietor whose application is approved under section 15,
- a corporation where the application of a director of the corporation is approved under section 15, and
- a partnership where the application of a partner in the partnership is approved under section 15,

and includes the Crown in right of Alberta and the Crown in right of Canada insofar as the latter, in its capacity as employer, submits to the operation of the *WCA*.

2. *How does WCB decide if someone is operating a business?*

WCB uses the following criteria to determine an individual's status as either a worker or business owner:

- direction, control and independence
- ownership of or provision of materials, tools and equipment
- ability to hire workers or subcontractors
- financial risk, including the opportunity for business profit and loss
- responsibility for investment

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Worker or business owner status (continued)

- responsibility for business infrastructure (such as legal incorporation, website, marketing, insurance, permits and licenses)
- any other information that WCB considers relevant

Any one or any combination of the criteria above may be sufficient to determine whether someone is a business owner or a worker.

If WCB determines that an individual is a worker rather than a business owner, under s. 16(2) of the *WCA*, WCB can deem the individual to be a worker of their principal. This includes directors of incorporations determined not to be operating a business.

3. *What is a corporation?*

A corporation is:

- a separate legal entity created by the act of incorporation under the *Alberta Business Corporations Act*, the *Canada Business Corporations Act*, or any other statute,
- capable of making contracts in its own right and performing all the acts necessary for the operation of the business, and
- commonly called a limited or incorporated company.

Corporations have a continuous existence apart from that of their shareholders. The shareholders typically appoint directors to manage the business and affairs of the company.

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4. *Who is responsible for providing workers' compensation coverage when a corporation has workers?*

The corporation is the legal entity responsible for providing coverage when it employs workers in an industry to which the *WCA* applies in Alberta. Neither the directors nor shareholders are the employers.

When a corporation ceases to exist relative to the legislation under which it is registered, it generally ceases to operate as an employer under the *WCA*.

5. *What coverage do directors of a corporation have?*

Under s.15 of the *WCA*, the directors of a corporation are neither workers nor employers. They do not have workers' compensation coverage or protection from lawsuits arising from work related injuries unless:

- they have personal coverage in effect in the industry in which they are working (see Policy 06-02, Part II, Application 2), or
- they are deemed workers under s.16(2).

6. *Is the director's status under WCB affected by the type of duties performed for the organization?*

No. Section 16 of the *WCA* refers to when a director of a corporation "is performing the work as part of the business of the corporation, whether by way of manual labour or otherwise." Many directors are actively involved in the day-to-day tasks of the business as well as the statutory duties defined in the *Alberta Business Corporations Act*.

For example, a director of XYZ Bobcat Inc. manages the company and also operates the bobcat. All of the work the director does for XYZ Bobcat Inc., including tasks such as operating the bobcat, supervising other company employees, and managing the company, is part of the director's role and does not change the individual's status as a director.

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7. *What is the status of the shareholders of a corporation?*

The shareholders of a corporation are not usually considered either workers or employers. However, when they provide services to the corporation, whether they are paid or not, shareholders are considered workers.

When shareholders are also directors of the corporation, their director status takes precedence for the purposes of workers' compensation coverage and they are only covered if they have personal coverage in place (see Policy 06-02, Part II, Application 2).

8. *Must all employers be incorporated?*

No. Individuals or partnerships that are not incorporated may also be considered employers when they employ workers, contractors, or subcontractors. As employers, they are required to establish accounts (see Application 4, Principals, Contractors, and Subcontractors).

9. *What is a proprietor?*

For WCB purposes, a proprietor is defined in s.1(1)(w) of the *WCA* as an individual who owns and operates a business,

- the general business activity of which usually involves performing work for more than 1 person concurrently, and
- in connection with which the individual does not employ workers.

WCB may deem individuals or classes of individuals to be proprietors.

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10. *Are proprietors required to provide their own workers' compensation coverage?*

While it is not compulsory for proprietors to provide their own coverage, they have the option of applying for personal coverage from WCB (see Policy 06-02, Part II, Application 2). If they elect the personal coverage option, they are entitled to the benefits provided by the coverage if injured in the industry for which coverage is in effect. Proprietors with personal coverage in effect are not considered to be workers of their principal.

11. *When is a proprietor without personal coverage protected under the WCA?*

A proprietor who does not have personal coverage and performs work for a principal in an industry to which the *WCA* applies is considered to be a worker of that principal, and is covered under the *WCA*. When a proprietor who does not have personal coverage performs work on their own behalf, for example, as an independent hot dog vendor, that proprietor is not covered under the *WCA*.

12. *What is a partnership?*

In general, a partnership:

- consists of two or more persons joined together in a common business venture for profit, in which there is a risk of loss,
- is one in which the partners have typically made a substantial capital investment in their business, and
- conducts all business in the name of the partnership (such as entering into contracts, banking, purchasing assets and materials, maintaining financial records, obtaining credit).

WCB may consider partnerships between spouses, adult interdependent partners, limited partnerships, and joint ventures to be employers.

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13. *What is a limited partnership?*

A limited partnership is formed when:

- one or more general partners (partners with unlimited liability), and
- one or more limited partners (whose liability is limited to the amount of their capital investment in the limited partnership)

join together to carry on a business or venture.

A certificate which is signed by all partners must be filed and recorded in Corporate Registry and must state the nature of the business and the terms of the partnership.

14. *What is a joint venture?*

A joint venture is formed when two or more parties (often corporations) enter into an agreement for a specific project or projects for a limited duration. The participants:

- usually designate one of the participants (or a third party) as the "operator" of the venture to act as its agent,
- pool their expertise and/or resources and spread the liability among them, and
- channel profits back to the individual participants, rather than being retained jointly for future investment.

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15. ***How does personal coverage apply to partners in a partnership?***
- Partnerships with no workers*
- It depends on the situation. Each partner is considered an employer when the partnership employs workers in an industry to which the *WCA* applies; however, partners must have personal coverage approved by WCB to be considered workers under the *WCA* and to be eligible for compensation benefits (see Policy 06-02, *Optional Coverage*).
- For partnerships with no workers, if none of the partners have personal coverage in effect, individual partners in a partnership are workers of the principal while working in an industry to which the *WCA* applies.
- When one or more partners have personal coverage, the partners with personal coverage are eligible for compensation benefits in the event of an injury. The partners without personal coverage are not, unless they are deemed workers under s.16.
- Partnerships with workers*
- For partnerships with workers, when none of the partners have personal coverage, the partners are protected as employers against legal action for work related injuries. However, the partners are not considered workers and are not eligible for compensation benefits in the event of injury. Only those partners with personal coverage are eligible for compensation benefits.
16. ***Does WCB consider individuals who pool labour to be a partnership?***
- No. When two or more individuals pool their labour to complete a labour contract, the individuals are considered workers of the principal (see Application 4, Questions 6-8).

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17. *Are associations and societies required to open an account with WCB?*
- All for-profit and not-for-profit associations and societies are required to open an account with WCB if they have workers in an industry to which the *WCA* applies. Coverage is available for those which operate in exempt industries (see Policy 06-02, Part II, Application 1). The directors of a society and the members of an association are not considered workers unless an application for personal coverage for those individuals has been approved by WCB (see Policy 06-02, Part II, Application 2).
18. *Are authorities, boards, commissions, or foundations required to open a WCB account?*
- All authorities, boards, commissions, or foundations are required to open an account with WCB if they have workers in an industry to which the *WCA* applies. Coverage is available for those that operate in exempt industries (see Policy 06-02, Part II, Application 1).
- The appointed members of an authority, board, commission or foundation are not considered workers unless a personal coverage application is approved by WCB (see Policy 06-02, Part II, Application 2).
19. *What levels of government are required to maintain workers' compensation coverage?*
- Municipal and provincial governments are required to participate in workers' compensation insurance.
- Federal government employees are covered under the *Government Employees Compensation Act*, which authorizes WCB to administer compensation for workers of the Government of Canada in accordance with the *WCA*. This applies to federal government employees while working in Alberta, the Yukon Territory, Nunavut, or in the Northwest Territories, except members of the regular forces of the Canadian Forces or of the Royal Canadian Mounted Police.

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*Levels of government
(continued)*

Contractors and subcontractors of the Government of Canada are not considered to be workers of the federal government. These individuals may be considered employers if they engage workers, or may be eligible for personal coverage as proprietors if they have no workers (see Policy 06-02, Part II, Application 2).

**20. *When is this policy
application effective?***

This policy application (Application 2 – Employers) is effective January 1, 2021 except when noted otherwise in a specific policy section(s).

Previous versions

- [Policy 0601 Part II - April 2018](#)
- [Policy 0601 Part II - August 2015](#)
- [Policy 0601 Part II - January 2007](#)
- [Policy 0601 Part II - January 27, 2004](#)
- [Policy 0601 Part II - January 1, 2004](#)
- [Policy 0601 Part II - January 2003](#)
- [Policy 0601 Part II - June 2002](#)
- [Policy 0601 Part II - January 2002](#)
- [Policy 0601 Part II - August 2000](#)
- [Policy 0601 Part II - July 1999](#)
- [Policy 0601 Part II \(consolidated manual 1st Issue\) - June 1998](#)