

Changes to WSIB Coverage in the Ontario Construction Industry

Bill 119: An amendment to the Ontario Workplace Safety and Insurance Act of 1997 (WSIA)

Effective January 1st 2013, the province of Ontario's Workplace Safety and Insurance Board (WSIB) is imposing harder helmets and stronger boots on the construction industry in Ontario. Though only figurative, the helmets and boots represent recent additions to the WSIB's policies aimed at increasing safety and health within the construction industry. New legislation is such that previously exempt independent operators, sole proprietors, partners and executive officers (whom we shall call *contractors* for simplicity's sake) will be required to register and obtain mandatory coverage with the WSIB as of January 1st 2013. According to Bill 119, these contractors will now be *deemed workers*, thus meaning that they must contribute premiums into the province-wide insurance fund of the WSIB.

In order to facilitate transition, the WSIB offers contractors the possibility to pre-register for 2013 coverage any time in 2012. This can be done at no cost, and with no premiums to pay until 2013.

Penalties for non compliance

Construction contractor BEWARE: failure to register by January 1st 2013 may result in severe penalties. Non compliance may be punishable with a fine of up to \$25,000 and/or imprisonment for up to six months for the non-compliant individual. If a corporation is non-compliant, it may receive a fine of up to \$100,000.

However, the WSIB promises to be reasonably accommodating during the first year of implementing its new policies. Between January 1st 2013 and December 31st 2013, it is the intent of the WSIB to waive usual sanctions, investigations and charges against non compliant individuals. The WSIB will take a more educative approach by contacting and creating awareness amongst parties who were unaware of legislation changes. Nevertheless, individuals who knowingly falsify or provide misleading information to the WSIB will be sanctioned.

Compulsory coverage

As mentioned above, independent operators, executive officers and partners in a partnership who work in the construction industry and who have no workers will soon be required to have WSIB coverage. Only the following individuals are exempt from mandatory registration with the WSIB:

Exceptions:

1. Home renovation work -

A contractor who **solely** performs home renovation work **on an existing private residence** that is or will be occupied by the person who **directly retains** (hires and pays) the contractor is exempt from compulsory registration.



For example, the contractor of a home renovation project is exempt from mandatory WSIB coverage, but his or her subcontractors must be registered since they were not *directly retained* by the owner of the existing private residence.

Therefore, even though the contractor is exempt from mandatory coverage, he/she must still register the hired workers and report their insurable earnings to the WSIB.

2. An officer who does not perform any construction work -

Partnerships and corporations are allowed to select **one partner or officer** to apply for exemption from coverage. This must be an individual who **does not perform any construction work, including on-site worker supervision**. On-site *visits* are the only allowed activity.

It is crucial that the exempt party have proof of their status as "officer", and of their qualification for the exemption. The WSIB retains the right to determine if this individual really qualifies.

Mandatory clearance certificate

As part of new legislation, both the contractor or subcontractor and the person directly retaining his/her services for non-exempt work must first obtain a WSIB certificate before any construction work can begin. The certificates are issued by the WSIB. They confirm that the principal, contractor or subcontractor is fully compliant with the WSIB. If a contractor fails to provide his/her certificate, the principal may deny him or her access to the jobsite.

The clearance certificate is valid for up to 90 calendar days and can be renewed after expiration. The WSIB insists that contractors keep their certificates for three years, for WSIB audit and inspection purposes. Failure to obtain, present or keep the certificate for three years will result in penalties for both the contractor and the hiring principal.

Insurable earnings in construction

The premiums paid by each contractor into the WSIB insurance fund are based on his/her insurable earnings. These earnings include hourly rate wages, salaries, commissions, bonuses, piecework, vacation pay, room and board and other allowances and taxable benefits. For the sole proprietor or partner in a

partnership, insurable earnings represent estimated annual self employment business income for the year.

Implications for your business

All these new policies are sure to change how independent contractors carry on their businesses. With owner-managers and shareholders contributing premiums into the WSIB, business owners might have to re-evaluate their tax planning and budgeting strategies. Some elements to take into consideration:

- Premium contributions constitute a tax deductible expense
- No HST is paid on the premiums
- Given that premiums are calculated based on insurable earnings, the higher a contractor's wages and salary, the higher the contributions. For tax minimization purposes, owner-managers might have to consider increasing dividend payments to themselves through their corporations, and stabilizing their salary income.

A parting thought

Overall, the most important element to retain is that the WSIB's new policies are aimed at ensuring greater safety and health within the construction industry. The WSIB offers no-fault protection to contractors for all work-related injuries and illnesses, shielding principals from lawsuits and promoting healthy recovery for injured parties. Through mandatory registration, contractors in construction will be able to benefit from this plan.

For more information, please refer to <http://www.wsib.on.ca/en/community/WSIB>

This'n That at Logan Katz

Logan Katz in the Community

Last month on June 27th Gary Katz, Trevor Kennedy and IP Strategies' David Bourada, spoke to realtors at Coldwell Banker Sarazan on Income Tax & Wealth Management Strategies for Real Estate Agents.

On July 9th Gary Katz, Luke Hudson and Trevor Dickison spoke to a group of individuals of the Institute of Professional Bookkeepers—Ottawa Region on Year End Working Paper Preparation. The seminar covered the basis of preparing year end tax return for three types of engagements.

Logan Katz's own Don Armstrong is a mentor with Invest Ottawa's Summer Company program, a province-wide program that helps students launch and manage successful businesses.

Wishing everyone a safe and enjoyable summer!!