

**Operational  
Policy**

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## Policy

Independent operators, sole proprietors, partners and executive officers are not automatically covered under the *Workplace Safety and Insurance Act, 1997* (WSIA) unless they apply for optional insurance, or they are in the construction industry and are compulsorily covered.

Under the WSIA, compulsory coverage extends to independent operators, sole proprietors, partners and executive officers in the construction industry, with certain exceptions. An individual in the construction industry who is exempt under policy 12-01-06, Expanded Compulsory Coverage in Construction, may make an application for optional insurance.

An individual applying for optional insurance, or requesting an adjustment to the approved amount of insurance, must provide proof of earnings that is acceptable to the WSIB. Failure to do so may result in the WSIB determining that the applicant does not have optional insurance, or denying the request to adjust the approved amount of optional insurance.

A request for optional insurance must bear the signature of the applicant to indicate consent to insurance coverage. When there is no signature, there is no optional insurance in effect, and the individual is not eligible for loss of earnings (LOE) benefits.

For an individual with optional insurance who is carrying on a Schedule 1 business activity, if the individual's approved amount of insurance is less than the average earnings determined at the time of injury, the WSIB may use the approved amount of insurance to calculate LOE benefits.

If a sole proprietor, partner, or independent operator has operated a business for less than a year and applies for optional insurance, the WSIB sets the approved amount of insurance at one-third of the maximum annual insurable earnings ceiling.

## Purpose

The purpose of this policy is to outline the requirements of optional insurance, proof of earnings to set the level of coverage, how to cancel optional insurance, and when the WSIB will cancel optional insurance.

## Guidelines

### General

All guidelines up to and including "Cancellation by the individual or the employer" apply to business activities in Schedule 1 or Schedule 2. All guidelines following "Cancellation by the individual or the employer" apply to business activities in Schedule 1 only.

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## Definitions

### Optional insurance

Individuals who are not automatically covered under the WSIA but who the WSIB deems, upon application, to be workers to whom the insurance plan applies, are said to have optional insurance.

### Approved amount of insurance

This amount is based on an individual's average earnings, as determined and approved by the WSIB, taking into account the period of insurance requested. The amount is used to calculate optional insurance premiums for the upcoming year.

### Average earnings

An individual's average annual earnings are calculated from the most recent Canada Revenue Agency (CRA) income tax return or audited financial statement, and are subject to the maximum annual insurable earnings ceiling, see 18-01-02, Benefit Dollar Amounts - Accidents from 1998. Average earnings are used to calculate LOE benefits.

Unless the individual is an independent operator, sole proprietor, or partner operating for less than a year, the approved amount of insurance for one year cannot be less than the individual's average annual earnings.

### Earnings

The term earnings, when used on its own or when included in the phrase "proof of earnings", refers to an individual's employment earnings.

### Executive officers

In addition to executive officers of corporations, certain individuals whose employers are not corporations are also considered executive officers, see 12-03-03, Who Can Obtain Optional Insurance?.

### Right of action

Individuals with optional insurance lose certain rights of action, see 15-01-05, Third Party Rights of Action. Those considering optional insurance may choose to seek independent legal advice before applying for optional insurance.

### Benefits

In most cases, individuals with optional insurance are entitled to all benefits that would be due to an injured worker, including LOE benefits, health care, etc.

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## Exception cases

Eligible individuals who fall into one or more of the following exception categories must notify the WSIB of their employment status when applying for optional insurance. The WSIB then determines the amount of their optional insurance and, for individuals engaged in a Schedule 1 business activity, how their premiums will be reported and paid.

Exception categories include:

- individuals whose earnings are divided among two or more accounts linked to one employer
- executive officers working for two or more employers
- executive officers who also have independent operator, sole proprietor, or partner status in another business, and/or
- individuals eligible for optional insurance who are also part-time workers (not as executive officers) under the WSIA in another business.

## Change of job status

When the job status of individuals with optional insurance changes, optional insurance continues as requested if the individual still holds an eligible position. For example, if a sole proprietor becomes a partner, or an executive officer (such as a director) becomes a chairperson, eligibility for optional insurance is not affected, see 12-03-03, Who Can Obtain Optional Insurance?.

## How to apply Schedule 1

Individuals apply for optional insurance by completing the Optional Insurance Request/Change Form, or by sending the WSIB a letter providing:

- the individual's name, address, and telephone number
- the individual's status, i.e., independent operator, sole proprietor, partner, or an executive officer's with specific job title (e.g., general manager, director)
- the date the business was started, if it is already operating
- the insurance period requested (three months to one year, see "Period of insurance" below)
- proof of earnings (see "Premiums for Schedule 1 employers," below) if the individual is:
  - an executive officer, or
  - an independent operator, sole proprietor, or partner in operation for one year or more
- the effective date requested
- the individual's signature and,
- For executive officers, the title and signature of the employer or an authorized officer.

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The WSIB does not accept telephone requests for optional insurance.

If an independent operator, or a partner in a partnership not employing workers, is carrying on a business activity not covered under Schedule 1 on a mandatory basis and wants optional insurance, the employer must apply to have the operation added to Schedule 1, see 12-01-02, Employer by Application.

If an account including optional insurance has an overdue balance, the WSIB does not accept requests for new optional insurance, or for an increased amount of optional insurance, until the amount owing is paid in full.

**Schedule 2**

Executive officers request optional insurance by completing the Optional Insurance Consent Form Under Schedule 2. The form must be signed and dated by both the applicant and the employer or an authorized officer. The completed consent form is retained by the employer. Insurance is effective as of the date of the signed form.

For an executive officer to be considered for benefits, a copy of the consent form must be filed when an injury is reported with an Employer's Report of Injury/Disease (Form 7).

Sole proprietors, independent operators, and partners who carry on a Schedule 2 business activity must contact Schedule 2 Account Services to apply for optional insurance.

**Cancellation by the individual or the employer**

Cancellation of optional insurance may be requested by the individual holding the optional insurance. An employer's request to cancel must be in writing, signed and dated.

For individuals engaged in a Schedule 1 business activity, the request to cancel is forwarded to the WSIB. The WSIB then cancels the insurance on the date the cancellation request is received, or on a requested future date. The WSIB issues a notice of cancellation to the individual and, if applicable, to the employer.

For individuals engaged in a Schedule 2 business activity, the request to cancel must be signed and dated by the person cancelling the insurance (the individual holding optional insurance). The request to cancel is retained by the employer, along with the original application. The request takes effect on the most recent date of signing, or a future requested date.

**Executive officer leaves employer**

If an executive officer stops working for the employer, optional insurance is cancelled effective the last day worked. If the officer was working for more than one employer, the optional insurance continues with the other employer(s).

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**Individual no longer eligible**

If an individual is no longer eligible for optional insurance because of compulsory coverage in construction or a change in employment status, optional insurance is cancelled from the date the individual's status changed. For example, if a partner in a business ceases to be a partner but stays on as an employee, that individual is no longer eligible for optional insurance.

If an individual in the construction industry is no longer eligible for optional insurance because of a material change in circumstance, optional insurance is cancelled the date of the material change. See 12-01-06, Expanded Compulsory Coverage in Construction.

**Business ceases employing help**

If a business that has individuals with optional insurance stops employing workers but does not stop operations, optional insurance continues until either the business stops or the insurance is cancelled.

**Business ceases**

If the business of an independent operator, sole employer, proprietor, or partnership without workers is discontinued, optional insurance is cancelled effective the date operations stop. This closure of a business is a reportable material change in circumstance, see 22-01-01, Material Change in Circumstances - Employer.

**Death of individual**

If an individual with optional insurance dies, optional insurance is cancelled effective the date of death.

**Individual receiving benefits**

If an individual engaged in a Schedule 1 business activity who has optional insurance receives LOE benefits as a result of a work-related injury, the WSIB does not automatically cancel the insurance. It is the individual's responsibility to notify the WSIB if cancellation is desired.

**Cancellation by the WSIB (Schedule 1 only)**

The WSIB cancels optional insurance for all individuals under Schedule 1 whose premiums are reported by an employer if

- the employer has an overdue balance on one or more accounts, or
- the WSIB initiates legal action to recover the amount owing.

Cancellation is effective at midnight of the 15th calendar day following the day on which the WSIB issues a notice addressed to the employer and to the individual with optional insurance.

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**Unable to locate employer**

When correspondence is returned to the WSIB as undelivered, or the WSIB cannot locate the employer's address, the WSIB cancels any existing optional insurance.

**Premiums for Schedule 1 employers**

The approved amount of insurance for an individual determines the premiums to be paid for optional insurance. The method for calculating average earnings is described in the following guidelines (the WSIB uses the same method for both premium and benefit calculations.)

Optional insurance premiums for a given year are based on average earnings calculated for a previous year.

**Period of insurance**

In most cases, individuals applying for optional insurance request insurance on a continuing basis from the day the insurance comes into effect. However, individuals may request optional insurance for less than a year. The minimum period is three months.

**Proof of earnings**

The following guidelines assume that the optional insurance has been requested for a full year on a continuing basis, except where noted.

Acceptable proof of earnings must be provided as requested by the WSIB. Situations where the WSIB requests proof of earnings include those detailed below. Without acceptable proof of earnings, the WSIB may deny an application for optional insurance, cancel existing optional insurance, or determine the approved amount of insurance at its discretion.

**Average earnings for executive officers**

The average earnings for an executive officer are the earnings reported on the previous year's CRA income tax return.

**In operation less than a year**

If the employer has been in operation less than a year and there is no income tax return filing with CRA available, the average earnings are the executive officer's salary as stated by the employer.

**Average earnings for sole proprietors, independent operators, partners**

If an individual has operated a business for one year or more at the time of application, the WSIB determines the average earnings from:

- net business income for the previous year as reported to CRA, subject to audit by the WSIB. The WSIB overestimates the net business income by including such items as:
  - pension plan and RRSP contributions
  - depreciation and amortization

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- charitable donations
  - expenses arising out of the individual's use of personal home or vehicle for business purposes
  - dividends from the business, and
  - other items as appropriate,
- or
- an audited financial statement of earnings prepared by a chartered accountant.

**In operation less than a year**

If an individual has operated a business for less than a year at the time of application and requests optional insurance, the WSIB sets the approved amount of insurance at one-third of the maximum annual insurable earnings ceiling. The individual pays premiums based on this amount (see "Payment in advance", below).

**Updating the approved amount of insurance**

When an individual reports annual income to CRA (or produces an audited financial statement) and believes that the average earnings for the purpose of optional insurance have changed, the individual must immediately notify the WSIB in the same manner as a new applicant (see "How to apply" above) in order to update the approved amount of insurance.

Individuals whose approved amount of insurance has been set at one-third of the earnings ceiling must also update this amount in the same way after one year of operation.

The WSIB does not require an individual with optional insurance to update the approved amount of insurance more frequently than once a year.

**Effective date**

Optional insurance comes into effect on the date acceptable proof of earnings is received in writing by the WSIB.

**Payment in advance**

The WSIB may require payment in advance in the following three situations:

**1 – Newly registered independent operator, sole proprietor, or partner has been in operation less than one year**

In this case, the WSIB requires the equivalent of six months of optional insurance premiums in advance, with any remainder of the annual optional insurance premiums to be paid by the next scheduled due date.

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**2 – Independent operator, sole proprietor, or partner has been in operation for one year or more and requests a clearance certificate upon registration**

In this case, the WSIB requires the equivalent of three months of premiums in advance.

**3 – Individual whose optional insurance has been cancelled by the WSIB requests reinstatement**

At the discretion of the WSIB, such an individual may request to have optional insurance reinstated in the same calendar year in which the cancellation occurred. In these cases, the WSIB may request advanced payment, or may require any other conditions deemed necessary.

**Benefits paid on lower amount**

If an individual with optional insurance is entitled to LOE benefits as the result of a work-related injury and

- the individual did not notify the WSIB after the most recent CRA income tax filing or audited financial statement, and
  - the average earnings calculated using the most recent CRA income tax filing or financial statement do not match the approved amount of insurance on the account,
- the WSIB uses the most recent average earnings calculation, or the approved amount of insurance, whichever is lower, to determine LOE benefits.

If the average earnings based on the most recent filing or statement are lower than the approved amount of insurance, the WSIB does not refund the difference between the premiums already paid and the premiums that would have been paid based on the lower earnings amount.

**Zero average earnings**

If based on the most recent CRA income tax return or financial statement, if a claimant's average earnings are zero or less than zero (i.e., a net loss for the year), the WSIB does not pay LOE benefits. However, it provides health care and other benefits.

**Deduction from benefits**

When an individual is entitled to benefits due to a work-related injury and has amounts owing on their account, the WSIB may deduct the amount owing from any benefits payable to that individual.

**Application date**

This policy applies to all decisions made on or after January 1, 2020.

**Document history**

This document replaces 12-03-02, dated April 1, 2016.



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## **References**

### **Legislative authority**

*Workplace Safety and Insurance Act, 1997, as amended*

Sections 12, 12.2, 53(1)

### **Minute**

Administrative

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