

**Operational
Policy**

Section
Employer Accounts

Subject
Insurable Earnings – Construction

Policy

Construction employers must calculate the amount of premiums owed, report and remit the amount to the WSIB. The calculation of premiums is based on the insurable earnings paid to all their workers.

The WSIB sets a minimum amount of insurable earnings for sole proprietors, partners and executive officers of a corporation in construction.

This policy should be read in conjunction with 14-02-08, Determining Insurable Earnings.

Purpose

This policy describes the method to be used by construction employers when determining the amount of insurable earnings to report for workers, for contractors who are workers and for deemed workers under expanded mandatory coverage in construction.

Guidelines

General

This policy applies to workers and deemed workers under mandatory coverage provisions in the construction industry. For more information on deemed workers and deemed employers, see 12-01-06, Expanded Mandatory Coverage in Construction.

In the construction industry, the independent operator, the sole proprietor, the partners of a partnership and the executive officers of a corporation are deemed workers for whom insurable earnings must be reported and premiums remitted.

Insurable earnings in construction are calculated using the guidelines outlined in this policy for the following

- Workers in receipt of wages or salaries
- Contractors who are workers of the principal
- Deemed workers (Independent Operators, Sole Proprietors, Partners and Executive Officers).

Definitions

“Earnings” are the worker’s total employment remuneration capable of being estimated in terms of money.

There are two kinds of earnings, insurable and non-insurable. Only insurable earnings are included in the premium calculation. Insurable earnings are reported to the WSIB until they exceed the amount of the annual maximum insurable earnings (see “Maximum amount of insurable earnings” below).

**Operational
Policy**

Section
Employer Accounts

Subject
Insurable Earnings – Construction

Employer contributions for employment benefits on behalf of injured workers, pursuant to s.25(1) of the *Workplace Safety and Insurance Act, 1997* (WSIA), are not considered earnings, and are not included in the calculation of premiums.

“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 insurable earnings ceiling, see 18-01-02, Benefit Dollar Amounts – Accidents from 1998. Average earnings are used to calculate loss of earnings (LOE) benefits.

“Independent Operator” in construction means an individual who

- does not employ any workers, **and**
- reports themselves as self-employed for the purposes of an Act or regulation of Ontario, Canada or another province or territory of Canada (e.g. CRA), **and**
- is retained as a contractor or subcontractor by more than one person during an 18-month period,

or

an individual who is an executive officer of a corporation that

- does not employ any workers other than the individual, **and**
- is retained as a contractor or subcontractor by more than one person during an 18-month period.

Section A – Workers in receipt of wages or salary

Insurable earnings for workers in receipt of wages or salary include earnings derived from methods of payment such as

- pay by hourly rate
- piecework
- salary
- commission
- vacation pay
- room and board
- bonuses, and
- the value of most other allowances and taxable benefits.

Insurable earnings include amounts reported on an earnings statement or wage slip, before any deductions are made for Income Tax, Employment Insurance, Canada Pension Plan, health care plans, loan payments and union dues.

**Operational
Policy**

Section
Employer Accounts

Subject
Insurable Earnings – Construction

Refer to 14-02-08, Determining Insurable Earnings, for a list of items considered insurable and items considered non-insurable when calculating the amount of a worker's insurable earnings for reporting to the WSIB.

Section B – Contractors who are workers of the principal

When the principal hires an individual contractor to perform construction work, and this individual is not an independent operator in construction, the principal is the employer of such an individual for all WSIB purposes.

The principal determines the gross insurable earnings for contractors who are workers based on the labour portion of the contract. If the records are adequate to accurately determine the labour portion, as described below, those records must be used. Otherwise, the guidelines below under "Inadequate records" apply.

Determining the labour portion of the contract**1. Adequate records**

When business records, contractor's invoices, or written contracts accurately identify the actual labour portion of the contract by identifying the amounts allocated and billed for labour, and for materials, equipment and/or installation supplies, the labour portion is treated as the contractor's gross insurable earnings.

Note

Unless the terms of the contract specify that a truck/vehicle must be used in the direct performance of the construction to be performed by the contractor, the WSIB does not allow a deduction for vehicle expenses.

2. Inadequate records

- a) When the business records are not adequate to identify the labour portion of the contract **and** there is no evidence that the contractor supplied major materials and/or heavy construction equipment used in the direct performance of the construction work, the WSIB considers the entire contract value (100%) as the contractor's gross insurable earnings.
- b) When the business records are not adequate to identify the labour portion of the contract **and** there is evidence that the contractor supplied major materials, and/or heavy construction equipment, used in the direct performance of the construction work, the WSIB permits the principal to identify the labour portion using the following allowed percentages:
 1. where a contract provided labour and major materials, the principal is to use 60% of the contract value as the contractor's gross insurable earnings.
 2. where a contractor provided labour and heavy construction equipment, with or without major materials, the principal is to use 33 1/3% of the contract value as the contractor's gross insurable earnings.

Lists of what the WSIB accepts as “major materials” and “heavy construction equipment” are provided in Appendix I and Appendix II, located at the end of this policy.

Section C – Independent operators in construction

The guidelines set out in this section apply to independent operators in construction.

Independent operators in construction are self-employed individuals, incorporated or not, who do not employ workers, and who are retained as a contractor by more than one person during an 18-month period. This includes sole proprietors without workers and single officer corporations without workers who are retained as a contractor by more than one principal during an 18-month period.

Independent operators must determine their own insurable earnings and report them to the WSIB. The gross insurable earnings are based on the labour portion of the contract.

If the records are adequate to accurately determine the labour portion, as described under “Adequate records” in Section B, those records must be used. Otherwise, the guidelines outlined, also in Section B under “Inadequate records” apply.

If the independent operator calculated the labour portion of the contract using the allowed percentages, described under “Inadequate records” in Section B, the independent operator must be able to provide proof, upon request from the WSIB, that either major materials or heavy construction equipment were supplied and used in the direct performance of the construction work.

Lists of what the WSIB accepts as “major materials” and “heavy construction equipment” are provided in Appendix I or Appendix II, located at the end of this policy.

Section D – Sole proprietors with workers, partners and executive officers in construction

The guidelines in this section apply to the following deemed workers in construction who do not operate their business alone as single person business entities

- a sole Proprietor with workers
- a partner in a partnership, with or without workers
- an executive Officer in a single officer corporation, with workers
- an executive Officer in a multi-officer corporation, with or without workers

These guidelines do not apply to independent operators as defined in Section C.

Reporting insurable earnings

If the estimated amount of insurable earnings was lower than the actual insurable earnings determined at the end of the calendar year, sole proprietors, partners and executive officers

must revise the reported amount of insurable earnings. Revisions may also be made throughout the current reporting year. When the amount of insurable earnings is estimated, deemed employers are to report updated earnings in the last reporting period for their account frequency (e.g. monthly or quarterly) of the current year for all deemed workers, including sole proprietors, partners and executive officers.

Calculating benefits at the time of injury

If an individual is entitled to loss of earnings benefits as the result of a worker-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 filing or financial statement do not match the reported insurable earnings on the account,

the WSIB retains the discretion to determine what is acceptable “proof of earnings” and may consider the insurable earnings amount that has been reported when determining a worker’s average earnings for benefit purposes. For more information, see 18-02-03, Determining Long-Term Average Earning: Workers in Permanent Employment and 18-02-04, Determining Long-Term Average Earnings: Workers in Non-Permanent Employment.

Sole proprietors and partners in a partnership

Sole proprietors in construction, and the partners of a partnership in construction are mandatorily covered. These individuals are the deemed worker and the deemed employer under the WSIA.

Determining insurable earnings

The insurable earnings for a sole proprietor in construction, and a partner in a partnership in construction, are the individual’s annual self-employment business income from the sole proprietorship or partnership registered with the WSIB, subject to the minimum and maximum amount of insurable earnings.

The annual self-employment business income is the amount reported to the CRA as Net business income (Line 135) on the individual’s Income Tax and Benefit Return (T1 General). In the case of a partnership, each partner’s share of the total net business income is reflected in their own Income Tax and Benefit Return (T1 General).

Reporting insurable earnings

Each year, sole proprietors and partners in a partnership estimate their own annual insurable earnings for premium reporting in the current reporting year. This amount is then pro-rated and reported to the WSIB according to the account frequency (e.g. either monthly or quarterly). Sole proprietors and partners can use the prior year’s net business income on the Income Tax and Benefits Return (T1 General) filed with the CRA as the annual estimate for the current reporting year. This estimate must meet or exceed the annual minimum amount of insurable earnings.

**Operational
Policy**

Section
Employer Accounts

Subject
Insurable Earnings – Construction

Sole proprietors and partners must ensure that the annual reported amount of insurable earnings submitted to the WSIB is an accurate reflection of their annual net business income.

Executive officers in a corporation

Executive officers in construction are also mandatorily covered as deemed workers, and the corporation is the deemed employer.

The gross insurable earnings of an executive officer is based on the total of

- employment income reported on a T4 Statement of Remuneration Paid
- other insurable employment income reported on a T4A, Statement of Pension, Retirement, Annuity and Other Income
- dividends reported on a T5 Statement of Investment Income, and
- director fees issued by the corporation to the executive officer.

If the executive officer receives regular insurable employment income (as described above) throughout the year, the employer will report the executive officer's actual insurable earnings for each reporting period. If the executive officer does not receive regular employment income throughout the year, the employer may estimate the amount of annual insurable earnings for each executive officer for the current reporting year. This amount is then prorated and reported to the WSIB according to the account frequency (e.g. monthly or quarterly). This estimate must meet or exceed the annual minimum amount of insurable earnings.

The employer must ensure that all reported insurable earnings submitted to the WSIB for each executive officer is an accurate reflection of the actual insurable earnings.

Minimum amount of insurable earnings

The WSIB sets an annual minimum amount of insurable earnings for sole proprietors, partners and executive officers in construction. Each year the minimum amount is set at 1/3 the annual maximum amount of insurable earnings.

The WSIB may accept an amount lower than the minimum where the employer's business records provide evidence that the lower amount is more accurate for the annual amount of insurable earnings.

Additional reporting rules for calculating insurable earnings**Maximum amount of insurable earnings**

The WSIA sets an annual maximum ceiling for average earnings as a basis for the calculation of benefits. In addition, the WSIA provides that the insurable earnings of an individual worker

**Operational
Policy**

Section
Employer Accounts

Subject
Insurable Earnings – Construction

and deemed worker for the purpose of premium calculation be limited to the same maximum for average earnings set for benefit purpose.

Excess earnings

Excess earnings for an individual worker and deemed worker are any earnings that are above the annual maximum insurable earnings amount. Excess earnings are not insurable and premiums are not paid on them. Employers pay premiums on gross insurable earnings until the earnings of the worker or deemed worker reach the annual maximum insurable earnings amount.

Verification of the insurable earnings calculation

To verify the reported insurable earnings, the WSIB may review any documentation, as necessary.

If the reported insurable earnings differ from the verified amount of actual earnings, the WSIB will adjust the reported amount of insurable earnings accordingly (increase or decrease) for premium accuracy, under the guidelines stated in 14-02-06, Employer Premium Adjustments.

More than one classification assigned

For employer accounts assigned more than one classification, see 14-02-08, Determining Insurable Earnings for guidelines on reporting direct and common earnings.

Appendix I – Major Materials

Major materials means structural, mechanical and electrical components, such as

- Asphalt
- Bricks, blocks
- Cabinets
- Concrete and cement
- Doors
- Electrical wiring, boxes and supplies
- Fill and sand
- Flooring (wood, tile, carpet)
- Glass
- Gravel
- Insulation and vapour barriers
- Lumber and steel
- Paint
- Pipes
- Plumbing, heating, and cooling fixtures and equipment
- Rebar
- Road culverts

**Operational
Policy**

Section
Employer Accounts

Subject
Insurable Earnings – Construction

- Sewer pipes and elements
- Sheet metal ducts
- Shingles, tarpaper, valleys, and all other roof covering material
- Siding, soffit, fascia
- Wallboard
- Windows

Appendix II – Heavy Construction Equipment

Heavy equipment means any large item of capital equipment designed to be used in the construction industry, such as

- Backhoe
- Bobcat
- Bulldozer
- Cement mixer (truck or pumper)
- Compressors, excluding portable
- Crane
- Dump truck
- Front-end loader
- Gas powered tamper
- Grader, or other excavating equipment
- Jackhammer, excluding portable
- Scaffolding (multi-storey)
- Scissor lift generator
- Welding unit (truck mounted)

Application Date

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

Policy review schedule

This policy will be reviewed within five years of the application date.

Document history

This policy replaces 14-02-18, dated January 1, 2013.

References

Legislative authority

Workplace Safety and Insurance Act, 1997, as amended

**Operational
Policy**

Section
Employer Accounts

Subject
Insurable Earnings – Construction

Sections 2(1), 12, 12.1, 12.2, 12.3, 54(1), 81(5), 88(3), 151.2(1), 151.2(2), 159(2).

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Minute

Administrative

#13, December 17, 2019, Page 573