



# Workers' Compensation Newsletter

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Currently, a large percentage of workers and employers, particularly in the trucking and construction industry, have deemed themselves to be contractors and subcontractors and exempt from WSIB coverage. For instance, truck drivers who own or merely lease their rigs have been deemed to be independent operators and are not subject to mandatory WSIB coverage. In construction, sub-trades such as window installers, who may work for several different contractors, have been deemed to be independent operators.

I have used the word "deemed" because often, particularly in construction, the independent operator arrangements are made, on the initiative of the employer and worker, without the prior approval of the WSIB. In order to ensure that the Board will accept an individual as an "independent operator", an employer may complete a form and seek the Board's advance approval of the designation. However, many employers have reported that the Board has been very slow to respond to their applications, and, for that and other reasons, have bypassed the application route.

The Workplace Safety and Insurance Board regards the entire situation as an example of "revenue leakage" and a swamp of inequity.

Workers, whose entrepreneurial independence is sorely lacking, and, more often, their employers, are escaping WSIB payments. These same "independent operator" workers are suffering injuries, often horrendous, and, regardless of being without WSIB coverage, are then filing claims for WSIB benefits, asserting that they were duped into independent status.

The current questionnaire used by the WSIB for the Construction Industry includes, in general terms, the following questions, to determine whether a worker is eligible for independent operator status:

- 1) How closely does the employer supervise the worker?
- 2) Does the worker or is the worker able to hire other employees?
- 3) Is the worker able to set his own work timetable?
- 4) What is the manner of payment?
- 5) Does the worker provide GST returns and is he incorporated?
- 6) Does the employee use the employer's insignia?
- 7) Does the employee invoice the employer for materials used?
- 8) Is there a collective agreement?
- 9) Does the employee own 80% of the equipment he uses to perform his job?
- 10) What are the rights of the worker and the employer with respect to terminating their contract?
- 11) Does the worker work for various employers during the year, and does he work for different employers simultaneously?