

ORGANIZATIONAL TEST FOR WORKERS

What Is the Organizational Test?

It is not always clear if someone is considered a worker who would be entitled to benefits, or an independent operator who is not automatically insured and would not automatically be entitled to benefits. For more information about who is entitled to benefits under the *Workplace Safety and Insurance Act, 1997* (WSIA/Act), see OWA Fact Sheet 32 called “Who Is Covered by the Act?”

In considering whether someone is covered by the Act, the Workplace Safety and Insurance Board (WSIB) has to decide if the person was employed under a **contract of service** which would make them a worker, or a **contract for service** which would make them an independent operator. WSIB uses the organizational test to make this decision.

What Does the Test Look At?

The organizational test looks at the following factors:

- Control over the work. For example, if someone controls when you work, where you work and how you work, it is more likely that you are a worker and not an independent operator.
- Ownership of tools or equipment.
- Chance of profit or risk of loss. For example, if you have the ability to make decisions about the costs incurred in doing work and these decisions have a significant influence on the amount of your profit, it is more likely that you are an independent operator and not a worker.
- Whether a person is part of the employer’s organization or operating their own separate business.
- Other work factors. For example, if you work for only one payer, and you are required to submit regular reports to the payer, and you do not control the worksite, then it is more likely that you are a worker.

Not every factor needs to be present in every case and no one factor will determine the issue.

How Does WSIB Apply the Organizational Test?

To gather the information needed to apply the organizational test, WSIB has developed questionnaires about a person’s status as a worker or as an independent operator. There is one general questionnaire and six industry specific questionnaires. These are:

- construction
- courier
- logging
- retail stores
- taxis
- trucking

The construction questionnaire is available in Italian, Spanish and Portuguese.

How Do You Get a Questionnaire?

To get a questionnaire you can telephone WSIB toll-free at: 1-800-387-0080 or (416) 344-4150 in Toronto. You can also visit the WSIB website at: www.wsib.on.ca and look under “Employers” and then “Forms”.

Who Completes a Questionnaire?

Both you and the principal (the company you currently have a contract with) complete the same questionnaire. You can complete separate questionnaires if you disagree about some of the answers or if you want to submit your financial information confidentially.

What Kind of Information Do You Need to Provide in the Questionnaire?

The information you need to provide varies depending on the form. If we look at the general questionnaire as an example, it asks for the following:

Part 1 – general information. For example, describe the work that the individual does; is there a written contract and has the individual ever had a WSIB account number.

Part 2 – specific information about who controls the working conditions. For example, who gives instructions; who provides training; who decides the hours of work; who decides the order of work; and what is the manner of payment.

Part 3 – the ownership of assets used and the responsibility for costs incurred in performing the work.

Part 4 – other work criteria. For example, does the individual have a continuing relationship with the principal; does the individual work for more than one principal at a time; can the individual hire other workers without the principal’s approval; is the individual able to hire workers to assist; and is the individual required to submit reports to the principal.

How Does WSIB Decide?

WSIB will review the responses to the questionnaire and, based on the responses, will decide whether you are an independent operator or a worker. If you are found to be an independent operator then you would not be covered by the Act unless you apply to WSIB for optional insurance. For details about how to apply and what kind of coverage is offered, see OWA Fact Sheet 34 called “Optional Insurance”.

What if You Disagree with the WSIB Decision?

If you disagree with the WSIB decision, then you have **six months** to appeal.

IMPORTANT INFORMATION

There are time limits for appealing WSIB decisions. If you wish to appeal a decision, contact a qualified representative as soon as possible. For more information on time limits, see OWA Fact Sheets 24 and 25 called “Appealing to WSIB” and “Appealing to WSIAT”.

This Fact Sheet contains general information only. It is not a legal document. To see what the law says, you should look at the Workplace Safety and Insurance Act and WSIB policies. If you require help and do not have a union to assist you, contact the Office of the Worker Adviser:

- Our toll free telephone number is 1-800-435-8980 (English) or 1-800-661-6365 (French)
- or visit our website at <http://www.owa.gov.on.ca>

Cette feuille-info est aussi disponible en français

