

Operational Policy Manual

Document #(12-02-01) s.11(1)

A "worker" does not include

- an outworker (a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale in the person's own home)
- an executive officer of a corporation
- or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's industry.

Document # (12-03-02)

Policy

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 as the base for calculating 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.

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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" in this document apply to business activities in Schedule 1 only.

Definitions

Optional insurance

Individuals who are not automatically entitled to benefits under the Act 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 income tax return or audited financial statement, and are subject to the maximum annual insurable earnings ceiling (see [18-01-02, Benefit Dollar Amounts](#)). Average earnings are used to calculate loss of earnings benefits. **NOTE (ceiling for 2009 is \$74,600)**

NOTE

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 (for details see [12-03-03, Who Can Obtain Optional Insurance?](#))

For the purpose of this policy, independent operators, sole proprietors and partners who have incorporated are not considered executive officers of a corporation as stated in s.12(2) of the Act.

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 legal advice on whether insurance will benefit them.

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.

Exception cases

Individuals eligible for optional insurance who fall into one 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
- individuals eligible for optional insurance who are also part-time workers (not as executive officers) under the Act 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

NOTE

The WSIB does not accept telephone requests for optional insurance.

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, for executive officers, 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.

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 compulsory 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

NOTE

The following guideline applies to executive officers only.

Sole proprietors, independent operators, and partners who carry on a Schedule 2 business activity and want optional insurance should contact Schedule 2 Account Services.

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 the injury is reported with a [Form 7](#).

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).

Individual no longer eligible

If an individual is no longer eligible for optional insurance because of 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.

Business ceases employing help

If a business including 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 the 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, and
- 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 mails a notice by registered mail, addressed to the employer and to the individual with optional insurance. The WSIB uses the address of the employer as listed in the WSIB's records.

Unable to locate employer

When mail to a Schedule 1 employer is returned by Canada Post, 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.)

NOTE

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.

NOTE

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

Proof of earnings

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 Canada Revenue Agency income tax return.

In operation less than a year

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

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Executive officers

The WSIB determines who is an executive officer according to employer type. The following chart lists the positions that qualify as executive officer positions under this policy.

Employer Types and Executive Officers

EMPLOYER TYPE	DESCRIPTION	EXECUTIVE OFFICERS
Limited liability companies	legally incorporated with share capital	- members of the board of directors - chair and vice-chair of the board of directors - corporate president, chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), vice-president, general manager of the corporation, corporate secretary and treasurer
Non-Profit	non-incorporated, or legally incorporated without share capital	- directors of the governing board or the equivalent thereof
Municipalities	incorporated and non-incorporated, including cities, towns, villages and native bands	- all elected officials (e.g. mayors, city councillors) and temporary appointees to elected positions
Boards or commissions	public health service facilities (e.g. hospitals), utilities, municipal agencies, school boards, colleges and universities	- members of the governing board, either appointed or elected or the equivalent thereof
Provincial government		- deputy ministers

For the purpose of this policy, an individual such as a sole proprietor, a partner, or an independent operator who incorporates, is not considered an executive officer under section 11(2) of the Act.

Proof of executive officer status

The appointment of an executive officer must be verifiable through appropriate and current documentation such that

- The name of the executive officer must be recorded in the employer's minute book and
- The status of executive officer can be verified in other documents that the WSIB may review including resolutions by the board of directors, corporate by-laws, or public records filed with other government authorities.

Notwithstanding the above, the WSIB reserves the right to determine who is an executive officer by examining factors related to the individual's role and responsibilities. Specifically, the WSIB will review the substance of the relationship between the individual and organization to consider relevant factors, for instance, if the individual

- has been delegated the authority to act independently on behalf of the organization
- is responsible for the overall direction and control of the company's operations or financial affairs
- exercises a broad scope of authority to make decisions or formulate policies for the organization as a whole, rather than authority that is strictly limited to a specific branch or division
- has the ability to bind the organization.