

| Section | Policy |
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| 30 | 35.10.120 |

Section Title: Finance. Assessments and Administration - Assessments
Subject: Terms and Conditions of Optional Coverage
Effective Date: January 1, 2022

A. POLICY PURPOSE

The Workers Compensation Act (the Act) gives the Workers Compensation Board (WCB) authority to sell optional coverage to employers whose businesses operate in non-mandatory industries to ensure that their workers are covered in the event of a workplace accident.

The Act also allows the WCB to sell optional coverage to employers (including sole proprietors or partners in a partnership), directors and independent contractors to ensure that they themselves are covered in the event of a workplace accident. Once they have purchased optional coverage for themselves, personally, these employers, directors and independent contractors fall within the Act's definition of worker.

This policy sets out the general principles and terms and conditions the WCB will apply when selling optional coverage.

B. POLICY

I. General Principles

In most circumstances, the WCB will sell optional coverage to those who are eligible under the Act to purchase it. In some circumstances, however, the WCB will be unable to adequately assess the risk presented by a particular work activity or industry. Typically, this will occur where an applicant's business activities are very high risk and are not similar to industries already covered by the WCB. In such circumstances, the WCB may refuse to sell coverage to an applicant.

Policy 35.10.50, *Status of Workers, Independent Contractors and Employers*, provides guidance on additional factors that the WCB considers when determining whether to sell optional coverage to employers, directors and independent contractors.

When the WCB sells optional coverage to applicants, their assessment rates will be calculated using the rate setting model described in Policy 31.05.05, *Rate-Setting Model for Class E Employers*.

Workers with optional coverage are entitled to all of the benefits and services set out in the Act, subject to any limits on coverage outlined in this policy. Policies related to the calculation of average earnings, net average earnings, and recurrences will also apply to the calculation of benefits for these workers, subject to the limits on coverage outlined in this policy.

II. Terms and Conditions

The Act allows the WCB to set terms and conditions on any optional coverage it sells. Terms and conditions set for employers with business in non-mandatory industries are different from those set for employers, directors and independent contractors who wish to purchase coverage for themselves.

a) Employers with Businesses in Non-Mandatory Industries

When an employer who operates a business in a non-mandatory industry purchases optional coverage for a business, it must purchase coverage for all workers involved in that business. It cannot selectively cover or exclude workers or groups of workers within a single business. When an employer has more than one distinct business, it may purchase coverage for one business but not the other.

An employer who has purchased optional coverage for its business has the same rights and responsibilities under the Act as an employer who is subject to the Act's mandatory coverage scheme.

b) Employers, Directors and Independent Contractors Who Purchase Optional Coverage for Themselves

As of January 1, 2022, the minimum amount of optional coverage that employers, directors and independent contractors can purchase for themselves is \$27,060. This figure is subject to annual indexing in accordance with indexing factor set out in section 47 of the Act and rounded to the nearest \$10. The adjusted amounts are set out in Appendix A to this policy.

As of January 1, 2022, the maximum amount of optional coverage that employers, directors and independent contractors can purchase for themselves is \$150,000. For succeeding years, the maximum amount of optional coverage these individuals can purchase will be equivalent to the maximum annual earnings level established under section 46 of the Act for the year in question. The maximum annual earnings level is indexed annually in accordance with subsection 44(1) and section 47 of the Act. The adjusted maximum amounts of optional coverage are set out in Appendix A to this policy.

Employers, directors or independent contractors who purchase optional coverage for themselves should purchase an amount of coverage that reflects their actual average earnings. The WCB can assist these individuals in determining the level of coverage they need, based on their average earnings at the time they initially apply for, or apply to renew, their coverage. The WCB calculates average earnings in accordance with sections 45 and 46 of the Act and WCB Policy 44.80.10.10, *Average Earnings*.

Those who choose not to have their average earnings verified by the WCB prior to purchasing or renewing their coverage run a greater risk of being over or under-insured in the event of a workplace accident.

Following determination of entitlement to benefits as a result of a workplace accident, and upon request, the WCB will refund the difference in assessments (i.e. premiums) that the employer, director or independent contractor has paid for their own optional coverage when the level of coverage purchased is higher than the actual average earnings on which wage loss or fatality or survivor benefits have been paid. However, any refund of assessments cannot result in the employer, director or independent contractor paying less than the minimum annual assessment set out in Manitoba Regulation (MR) 123/2021, *Interest and Financial Matters Regulation*.

C. REFERENCES

The Workers Compensation Act, subsection 1(1), subsection 44(1), sections 45 to 47, sections 74 and 75.

Manitoba Regulation 123/2021, *Interest and Financial Matters Regulation*

Manitoba Regulation 196/2005, *Excluded Industries, Employers and Workers Regulation*

Related WCB Policies:

Policy 31.05.05, *Rate-Setting Model for Class E Employers*

Policy 35.10.50, *Status of Workers, Independent Contractors and Employers*

Policy 44.80.10.10, *Average Earnings*

History:

1. Policy 35.10.120 passed by Board Order 16/09 effective July 1, 2009, to limit wage loss and fatality benefits payable under optional or personal coverage.
2. Policy revised by Board Order No. 08/11 on April 28, 2011. Changes include: establishing and adjusting the minimum level of earnings for personal coverage and allowing the substantiation of earnings at time of injury, purchase or renewal of personal coverage.
3. Policy amended by Board Order 16/20, on June 18, 2020 to remove the maximum optional/personal coverage ("MOC") level to reflect the reinstatement of a statutory cap on insurable earnings for workers. These changes are effective on January 1, 2022.

APPENDIX A

Minimum and Maximum Amounts of Optional Coverage that Employers, Directors and Independent Contractors Can Purchase for Themselves

| Effective Date | Minimum | Maximum |
|-----------------------|----------------|----------------|
| January 1, 2022 | \$27,060 | \$150,000 |
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