

WCB Policy 35.20.10, Placement of Employers into Industry Classifications Administrative Guidelines

Please include the Board-Approved policy when referencing guidelines as they are intended to provide clarity and direction to ensure consistent administrative application of the policy.

These guidelines set out the process involved in establishing and modifying an employer's industry classification, including when an employer meets the criteria to have more than one industry classification.

How the WCB classifies an employer's business activities is critical because it will determine the range of rates they will pay. It also assists in setting fair and equitable rates which best reflect the collective liability of that group.

The following steps should be followed when determining an employer's industry classification.

Step 1 – General Business Description:

- Have the employer provide a brief description of their business activities; including information of any "ancillary" business relationships (see Step 3).

Step 2 - Determine Mandatory or Optional Industry Classification:

- Is the employer involved in an activity listed in Schedule A of Regulation 196/2005 of *The Workers Compensation Act*?
 1. If the activity is not listed the Regulation, their operations are likely mandatory and the employer is required to register.
 2. If it is listed in the Regulation, coverage may not be required.
 - Consider if their business activities are "stand-alone" as one of those listed in the Regulation, or if the activity they perform is dependent on a business relationship they have with an employer in a mandatory industry.
 - Employers in optional industries are required to report individuals they employ full-time at their trade in any of the specific occupations listed in Schedule B of the same regulation.
 - If the employer's activities are "stand-alone" and coverage is not mandatory, the employer may want to cover their workers voluntarily.
 3. Consider the employer's specific activities within Manitoba only. Employers with business activities outside Manitoba should not be considered when determining industry classifications. For example, a manufacturing firm in Ontario that only operates a business office in Manitoba to perform payroll and accounting functions would be considered optional.

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Step 3 – Detailed Business Activities:

- If the employer's activities require coverage, or if the employer's activities are optional and they want optional coverage, obtain detailed information about their business activities. This information needs to be obtained at the time of registration and subsequently through industry investigations or other times as required. Details should include answers to the following questions (where applicable):
 1. What end products and/or services are provided?
 2. What are the main sources of revenue? Who are their primary customers?
 3. Who are their main suppliers?
 4. Who are their main competitors?
 5. What type of equipment and processes are used? What are the occupations of their workers?
 6. Are sub-contractors used or any out-sourcing? If so, for what?
 7. What are the operations of associated and/or ancillary businesses?
 - As an employer's industry classification may be determined based on a business relationship(s) with other employers, information about any relationships with ancillary businesses must be obtained.
 - These relationships may or may not be with associated businesses (see WCB Policy 35.20.15, *Associated Employers*).
 - Businesses are ancillary when the business activities of one is essential and dependent on another. Factors used to determine this dependency include:
 - Location/premises/proximity of the businesses to each other;
 - The amount of their total business that is dependant on one another (i.e., percentage of revenue, like-supplies/materials, wages paid in connection with the relationship(s));
 - The sustainability of each business without the relationship;
 - Interchange/sharing of equipment, staff, or any other assets.
- Firms in optional industries are required to report any workers employed full-time at their trade in one of the occupations listed as "artisans and mechanics" in Schedule B of Regulation 196/2005 of *The Workers Compensation Act*. If the firm has not applied for optional coverage for all their workers, they will still be required to report the "artisan and mechanic" workers.

Step 4 - Industry Classification:

- Analyze the employer's detailed business activities to determine the industry classification(s) that best reflect the employer's activities.
- The WCB industry classification system is sectioned into eight (8) mandatory industry sectors and one (1) optional sector:

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- Sector 1 - Agriculture and Forestry
 - Sector 2 - Mines, Quarries and Oil Wells
 - Sector 3 - Manufacturing
 - Sector 4 - Construction
 - Sector 5 - Transportation, Communications & Storage
 - Sector 6 - Trade
 - Sector 7 - Service Industries
 - Sector 8 - Public Administration
 - Sector 9 - Optional (by Application) is reserved for those industries that are excluded from mandatory coverage, but wish to participate voluntarily.
- Within each industry sector are industry classifications that have specific descriptions and are identified by a five digit code which make up the industry classification system. Find the industry classification(s) that best reflects the employer's predominant business activities.
 - Determine which industry classification reflects the activities of the employer as well as all of its associated firms. Their operations should be reviewed as though they are one employer.
 - Consider the employer's specific activities within Manitoba only. Employers with business activities outside Manitoba should not be considered when determining an employer's industry classification. For example, a manufacturing firm in Ontario that only wholesales their products in Manitoba would be assigned a wholesale classification.
 - If the employer is requesting optional coverage, they are required to include all their workers. Employers are not allowed to purchase optional coverage for specific individuals, or exclude specific individuals from coverage. However, where an employer in an optional industry wants to cover a segment of their workers that are in a separate and distinct plant or location, we may consider extending coverage on this basis. This decision would need to be approved by an Assessment Business Analyst or the Supervisor of Assessment Program Services.
 - If an employer is requesting personal coverage for business owner(s), each individual should be placed under the industry classification that best reflects the type of activities they are involved in most of the time.
 - If the employer also has coverage for workers, the personal coverage will usually be assigned to the same industry classification.
 - For employers with more than one industry classification for workers, assign the personal coverage to the industry classification that best fits the type of work the individual is involved with most of the time. If the same amount of time is spent in the employer's multiple activities, assign the personal coverage to the industry classification with the lowest current year premium rate.
 - An employer may have more than one personal coverage industry classification, but each individual with personal coverage will only be assigned to one industry classification.
 - If the employer is engaged in the following industries, consult the appendices to these guidelines for more specific information on coverage:
 - Appendix "A" - Film and Television Production Companies
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- Appendix "B" - Religious Organizations & Clergy Members
 - Appendix "C" - Domestic Help
 - Appendix "D" - Family Members - Farming Only
 - Appendix "E" - Definition of "Teacher"
 - Appendix "F" - Firms Owned by Indians/Work on Reserves
 - Appendix "G" - Charities
 - Appendix "H" - Air Transport Firms
- Options to consider when determining an employer's predominant business activity:

It is recognized that some of the points below are also referenced in section 3 above (Detailed Business Description) but are repeated due to their relevance in determining the predominant business activity.

- Revenue streams (sales) - The activity with the highest revenue stream is usually indicative of the employer's predominant business activity.
- Does one of the employer's business activities depend on another business activity in order for the employer to generate any revenue?
- Research the employer's website - A firm will often describe its predominant business activity on their website.
- Research the employer's competitors' information - If the employer does not yet have a website or financial information, its predominant business activity could be derived from its competitors' industry classification or from its competitors' websites.
- Does the employer maintain a store front - For those employers that are in retail or wholesale, the fact that they maintain a store with the items it sells can be indicative that retail/wholesale sales is its predominant business activity. For example, a carpet store that has carpet samples in a store is usually indicative that the sale of the carpet is its predominant business activity and the installation of the carpet enhances the sale of the carpet.
- Other employers in a group of Associated Employers - If the employer is part of an Association, the predominant business activities of the other employers in the association can be considered in relation to the employer's own business activities in determining the predominant business activity.
- Consider the employer's name - In some cases an employer's name may incorporate a word that may suggest the main focus of the employer's business activity. For example, firm XXX Distributors has rate code 60105- Department Store and 40203 - Electrical Contracting and maintains a store front. Even if the employer has the highest payroll in rate code 40203, the predominant business activity, as their name ("Distributors") suggests, is that they are a retailer or wholesaler first and foremost.
- Discuss the employers main business focus with employer's representative - Information can be solicited from the employer as to what their main business focus is. This is also an opportunity to extract other pertinent information to assist in ensuring the employer is properly classified.

The above points are not an exhaustive list of things to consider when determining an employer's predominant business activity. Some situations may require other methods in

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order to obtain the required information to determine the primary business activity of the employer. Therefore the employer can submit any additional verifiable information they want us to use in making our decision regarding their predominant industry.

Step 5 - Modifications to an Existing Industry Classification:

- Generally, modifications to an employer's industry classification are required when an employer has undergone a substantial change to their business activities. However, there are circumstances when the WCB will determine that an employer, or a group of employers with similar activities, is better-suited to a different industry classification. This may have been uncovered through a WCB on-site industry investigation or information provided to the WCB by the employer. It may also be the result of the WCB's examination of the experience an employer, or a group of employers with similar activities, in comparison to others with the same industry classification.
- The effective date of modifications to an employer's industry classification will be made as outlined in WCB Policy of 35.05.10 *Reporting and Verifying Payroll*, and guidelines.

Step 6 - Multi Class Employer

- When an employer has different Departments within their operations, they may qualify to have more than one industry classification as part of their placement to reflect these different Departments' risks and rates of assessment.
- An employer's administrative departments (e.g., office/accounting, sales, information technology departments, etc.) are not separate business activities that are eligible for different industry classifications. These are necessary aspects of any business and are considered ancillary to, and exist to service and support, an employer's predominant activities.
- If there are Associated Employers, consider the activities of all the employers in the association. Depending on how their business relationships are structured, each employer may qualify for the same multiple industry classifications, or the multiple industry classifications may apply to the association and result in the industry classifications being different for each employer.

Operations All Mandatory or All Optional

- Where coverage for an employer's operations are all mandatory or all optional and include a number of different Departments undertaking different business activities, the employer will be assigned into more than one industry classification if the employer meets the criteria below.

To determine whether the employer qualifies for an additional industry classification, go through the following steps for each Department (See WCB Policy 35.20.10 *Placement of Employers into Industry Classifications*, Appendix A - Glossary of Terms):

1. Review three prior years of actual payroll for each Separately Administered Department.
 - If they cannot identify or separate payroll for the different Departments they will not qualify for an additional industry classification for this activity.
 - If the Department's average actual payroll over the three previous years is 20% or more of the employer's total assessable payroll or a minimum of \$750,000 annually,

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continue with Step 2. (If the payroll figures do not meet these thresholds, the employer will not qualify for an additional industry classification).

- If the account does not have 3 prior years of payroll:
 - If 2 years actual payroll only available, then both years need to meet \$750,000 or 20%
 - If 1 year actual payroll only available, then it has to be \$750,000 or 20%
 - If no prior years, use current year estimates
- When determining whether an employer meets the minimum payroll or percentage of payroll thresholds (i.e., \$750,000 or 20%), ensure you:
 - Include the earnings of electives with personal coverage.
 - Do not include the earnings reported under any Optional Farm Family Coverage industry codes or under 706-03, Domestic.
 - Employers who are classified under 501-11, I.J. Trucking report their payroll based on the residency of their workers. This is a reporting option unique to the trucking industry and this industry code. Therefore, the payroll thresholds for maintaining multiple industry codes will not apply to:
 - the 501-11 I.J. Trucking industry code, or
 - any industry code for separate activities these employers engage in as they would not be permitted to report these workers based on residency.
 - Do not include volunteer rate codes that assess employers based on a head-count.
 - Prorate their administrative, or indirect, payroll (e.g., office staff, salespeople, etc.) between the activities. For example:

Direct Payroll Distribution		
Manufacturing Staff	\$1,000,000	66.7%
Construction	\$500,000	33.3%

Based on the above percentages, add the employer's administrative payroll (\$300,000) as follows:

- \$300,000 x 66.7% = \$200,000 to manufacturing
 - \$300,000 x 33.3% = \$100,000 to construction
- \$750,000 represents the payroll threshold for medium size employers (See WCB Policy 35.05.05 Rate Setting for Class E Employers).
 1. Establish if the Department is in a different operation than the predominant operation of the employer.
 - Do they have separate revenue streams from external sources?
 - Do they have different competitors?
 - Do they operate out of separate locations?
 - Do they have different workers?

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If the employer indicates "yes" to any of these questions, continue on to Step 3. If they do not answer "yes" to any of these questions, they are not eligible for an additional industry classification.

2. Does the Department exist to service or support the predominant operation?
 - Is most of the Departments business derived directly from the function of the predominant operations?
 - Is most of the predominant operations enhanced by the functions of the Department?

If the employer indicates "yes" to either of these questions, they do not qualify for an additional industry classification. If they answer "no" to both questions, continue to Step 4.

3. Could the Department continue if the employer's predominant operations ceased?
 - Are the operations run at different times of the year (i.e., seasonal)?
 - Is there sufficient work from external sources (i.e., non-associated clients) to sustain the business with just this activity?

If the employer indicates "yes" to either of these questions, they qualify for the additional industry classification. If they indicate "no" to both of these questions, they are not eligible for the additional industry classification.

- "Artisans and Mechanics" (listed in Schedule B of Regulation 196/2005) are required to be covered where employed full-time at their trade. Employers in optional industries that only register to report these individuals will be classified consistent with the occupations being covered, and the multiple industry classification rules will not apply.

Operations Part Mandatory, Part Optional

- When the different Departments are a combination of mandatory and optional operations, the employer will qualify for different industry classifications when:
 - the operations are "Separately Administered", or
 - operations are not Separately Administered but the optional Department comprise more than 50% of the employer's total annual payroll.

When an employer has an optional Department that represents less than 50% of the employer's total payroll, those operations are deemed mandatory under the employer's main mandatory Department(s).

- Optional Farm Family Coverage will always meet the "Separately Administered" criteria and should be added if an employer wants to cover their family members.

Eliminating Industry Classifications

- When an employer's industry classification does not meet the criteria for Employer Multi Class, generally the industry classification should be closed for the current year (i.e., effective December 31 of the prior year).
- If the firm has more than one remaining industry classification, the payroll for the eliminated industry classification should be moved into the remaining classification that:
 1. Is related to the activities under the industry classification being eliminated (i.e., the activities are ancillary and/or incidental to one another). If none, then ...

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2. Is within the same industry sector. If none, then ...
 3. Has the same or closest risk category.

If none of the existing industry classifications are a fit based on these rules, forward the file to Assessment Program Services.

- The accident experience of an eliminated industry classification should be transferred to a remaining classification.
- The firm should be sent to APS for review to determine if the employer needs a blended rate.

Appendix A – Film and Television Production Companies

Movie and television production companies are required to cover their "behind the camera" workers. Under subsection 3 of Regulation 196/2005 of *The Workers Compensation Act*, they are not required to cover their "in front of camera" workers (e.g., stunt people, extras), or their independent contractors, which may include:

- Actors and entertainers, and
- Creative talent, such as writers and directors.

A production company can opt to include their "in front of camera" workers and/or their independent contractors in coverage.

Independent Contractors

A production company electing to cover their independent contractors must ensure they get each of them to complete an application for coverage. This application essentially states that the independent contractor accepts the coverage purchased by the production company, and that they waive any right to sue in the event of a workplace injury. These applications are held by the production company, but must be provided to the WCB in the event of a claim.

Unlike other workers, independent contractors are subject to a maximum annualized coverage level. This is the maximum amount the production company will report to the WCB for each of these independent contractors in their annual assessable payroll. It is also the most the independent contractor's wage-loss benefits will be based on in the event of a claim.

If the injury and loss of income continue beyond the duration of the independent contractor's contract, the WCB will verify future wage loss benefits based on WCB Policy 44.80.10.10 *Average Earnings*.

Important:

A notification will be placed on assessment files for production companies opting to cover "in front of camera workers" and/or "independent contractors." The same industry code and rate will apply to all workers.

Appendix B – Religious Organizations and Clergy Members

Subsection 27 of Regulation 196/2005 of *The Workers Compensation Act* lists the operation of a religious organization as exempt from mandatory coverage. There is also a separate exclusion for clergy.

If a religious organization wants to cover their workers, they are not required to cover the clergy as well. If they choose to include the clergy in their coverage, they will be included in the total assessment.

Important:

A notification will be placed on all assessment files for religious organizations indicating whether or not coverage includes their clergy members.

Appendix C – Domestic Help

Regulation 196/2005 of *The Workers Compensation Act* excludes individuals who are hired for domestic employment for less than 24 hours per week. Domestic help employed 24 hours per week or more (on average) are covered, and the employer must pay assessments for these workers. Domestic help can be someone hired to be a nanny, au pair, house-keeper, chauffeur, butler, chef, gardener, etc., and work in their employer's residence or care for their employer's family.

If the domestic help has regularly scheduled hours but is employed less than 24 hours per week and the employer wants to cover them with the WCB, the coverage would be considered optional, but would be under the same industry code as mandatory domestic coverage.

Employers in the business of providing domestic-type services to their customers (e.g., cleaning companies, home care providers, etc.) are required to cover their workers, even if the services provided are less than 24 hours per week.

Appendix D – Family Members – Farming Only

For most industries, family members employed by a company are like any other worker, and are included in WCB coverage. However, subsections 15(1) and 15(2) Regulation 196/2005 of the Act exclude farmers and their family members from mandatory coverage, even though any other workers they employ (i.e., those that do not meet the definition of "family member of a farmer" in the Regulation) are required to be covered.

If the farmer wants coverage, they would apply for Personal Coverage, just like any other owner of a business enterprise.

Coverage for the excluded family members is also available. All of the family members that work for the farm must be included in this optional coverage. Farms will report their family members' earnings and be assessed under a distinct Industry Classification code for optional farm family coverage. These family members would be entitled to the same WCB benefits afforded all other workers covered by the WCB.

Both Personal and Farm Family coverage can be cancelled at any time by the employer or by the WCB.

The definition of the industries this family member exemption applies to are also in the Regulation. Basically, they include all agricultural industries, except for ancillary activities, such as custom harvesting, crop dusting, hauling, etc.

Important:

A notification will be placed on all assessment files for farming activities where the family exemption exists. The notification will indicate that family coverage is only in effect if there is an active Farm Family industry code on the file.

Appendix E – Definition of “Teacher”

Schools or school boards, private or public, of kindergarten to grade 12 students are required to cover their staff, with the exception of "Teachers etc.", who are specifically excluded under Regulation 196/2005.

The WCB's definition of a teacher is a person employed by a school board under a written contract prescribed under Section 92 of the *Public Schools Act* and who holds a valid and subsisting teacher's certificate or limited teaching permit issued under *The Education Administration Act*.

Providing they meet the above requirements, teaching positions considered “excluded” from mandatory coverage:

- ◆ Principals and Vice-Principals,
- ◆ Resource, substitute and specialists,
- ◆ Teacher-Librarians,
- ◆ Guidance counselors,
- ◆ Coordinators,
- ◆ Consultants,
- ◆ Clinicians - including psychologists, physiotherapists, occupational therapists and speech language pathologists and nurses.
- ◆ When someone has a “limited teaching permit” they are excluded only while they are being paid as a teacher.

A school or school board can opt to cover their teachers along with the rest of their workers.

Important:

A notification will be placed on all assessment files for K - 12 schools indicating that "teachers" are not covered.

Schools opting to cover all workers, including teachers, are distinguished by being assigned to a different industry code. A notification will also be added to these files confirming optional coverage is in effect for the teachers.

Appendix F – Firms Owned by Indians/Work on Reserves

Regulation 196/2005 of *The Workers Compensation Act* ("the Act") excludes from mandatory coverage any employer carrying on an industry or business that is:

1. Owned by an Indian or Indian band, which includes:
 - An individual who is a Treaty Indian,
 - A partnership, where the majority are Treaty Indians, or
 - A corporation, where the majority of shareholders are Treaty Indians.
2. Where the work is carried out on reserve land (regardless of who is employed Treaty or Non-Treaty individuals). This can include any reserve land in Manitoba, and is not limited to the reserve land of the Indian or Indian band who owns the business. Includes operation of the band and band council itself.

If a reserve is the employer:

- They can opt for all-inclusive coverage for all their workers and would include coverage for work performed both on and off the reserve for all workers.
- OR
- They can cover workers in connection with a specific industry/activity:
 - If the majority of this activity is performed on the reserve the coverage is optional. They can elect to cover workers engaged in that specific activity. The coverage would include all workers in that activity whether working on or off the reserve.
 - If the majority of this activity is performed off the reserve coverage is mandatory. They must cover workers engaged in that specific activity. The coverage would include all workers in that activity whether working on or off the reserve.
 - A reserve employer covering only a specific activity(s) will be assigned to the industry classification(s) that best reflects the type of work being performed. If the classification is a mandatory industry code, the appropriate industry classification and rate will be assigned. If the coverage is optional, the industry code's coverage type should be changed to reflect that status.

If a firm is primarily owned by Treaty Indian(s) and/or Indian Band(s):

- If the majority of the employer's work is performed on the reserve the coverage is optional. The coverage would include all workers whether working on or off the reserve.
- If the majority of the work is performed off the reserve the coverage is mandatory. The coverage would include all workers whether working on or off the reserve.
- A company primarily owned by Treaty Indians/Indian Bands will be assigned to the industry classification(s) that best reflects the type of work being performed. If the industry classification is mandatory, the appropriate industry classification and rate will be assigned. If the coverage is optional, the industry classification's coverage type should be changed to reflect that status.

A company that is not owned by an Indian or Indian band, works on reserve land and hires Treaty Indians will be required to cover those workers.

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A company owned by Treaty Indians working primarily on the reserve must pass the Independent Business Test (see *Administrative Guidelines for WCB Policy 35.10.50, Status of Workers, Independent Contractors and Employers*) to be considered excluded from mandatory coverage while working on or off the reserve.

Important:

A notification will be placed on all assessment files owned by an Indian or Indian Band. If the industry code assigned to the employer is a mandatory code but the coverage is optional, the coverage type for that industry code will need to be changed to reflect it is optional.

Appendix G – Charities

Subsection 8 of Regulation 169/2008 lists charities as being exempt from mandatory WCB coverage.

A charity that is excluded from mandatory coverage is an organization exclusively devoted to raising money for charitable purposes. They raise funds to distribute to service organizations. They do not provide services directly to clients.

If a charitable organization raises money to support programs and services it administers, and those activities are considered mandatory, WCB coverage is required.

Appendix H – Air Transport Firms

Employers in the air transport/flying industries are required to report the earnings of all ground-crew employees in Manitoba, including ticket agents, office personnel, mechanics, baggage handlers, etc.

Canadian Flights

When calculating the Manitoba portion of flight crew earnings on Canadian (domestic) flights, the employer must include the portion of their flight crew earnings that represents their presence in the province, including flights flown through Manitoba airspace (i.e., did not land in Manitoba). Any reasonable method of calculating Manitoba's portion of earnings will be acceptable, as long as it reflects the flight crews' presence in and over Manitoba. Employers have used things like hours flown or mileage reports to calculate their Manitoba flight crew earnings.

International Flights

For miles flown outside Canada, employers are required to report flight crew earnings based on residency. So, a Manitoba resident flying from Winnipeg directly south (not over any other Canadian jurisdiction), and back would be reported entirely to the Manitoba WCB.