

New Ontario WSIB Rules of Importance for Charities

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Ontario churches and charities that retain contractors to perform construction work need to be aware of new legal obligations that were recently added to the [Workplace Safety and Insurance Act, 1997](#) (the “Act”).

The Pre-Existing Rules

Under the Act, anyone who retains a contractor to carry on certain business activities can be held liable if that contractor is subject to the Act’s insurance requirements and fails to register with, or pay premiums to, the Workplace Safety and Insurance Board (WSIB).¹ The list of business activities covered by this requirement is set out in [Ontario Regulation 175/98](#). A few examples that may be of relevance to charities are construction, “security guards,” and “building caretaking and janitorial service as a business.”²

For example, if a church retains a third-party contractor to provide security or janitorial services and that contractor turns out to be in default with WSIB, the church could be forced to pay the contractor’s WSIB premiums under the Act (the church would then have to sue the contractor or withhold the monies payable under the contract, but this may be insufficient). The only way to ensure this does not occur is to obtain a “clearance certificate” from the WSIB prior to the start of the contract (although this is not always required in cases of independent operators, as discussed below).³

A clearance certificate confirms that a contractor is registered with the WSIB and the contractor’s account is in good standing. By issuing a clearance certificate, the WSIB waives its right to hold the church liable for unpaid premiums and other amounts the contractor may owe the WSIB during the validity period of the certificate.

Until now a church was not required to obtain a clearance certificate (although it was still a good idea to do so in order to avoid liability). **As of January 1, 2013, however, the rules have changed for all contracts involving construction work.**

The New Rules – for Construction Work Only

Under the new rules, any individual, including a church or charity, who hires a contractor to do “construction work” is required to obtain a clearance certificate before allowing any work to begin.⁴ There are very few exemptions.⁵ The charity must also retain a copy of the certificate for at least three years after it is obtained. Failure to do so constitutes an offence under the Act, and can result in very substantial penalties: a fine of up to \$25,000 and possible imprisonment for

individuals, and a fine of up to \$100,000 for corporations.⁶ Charities should therefore take these new provisions very seriously.

The Take Home for Charities

The result of these provisions is that a contractor cannot perform any construction work for a charity without having valid WSIB coverage in place, and the charity can no longer rely on the contractor's verbal assurances: it must obtain confirmation in the form of a valid "clearance certificate" from the WSIB. If the charity has its own account with WSIB, the clearance certificate may be obtained online through WSIB's "[eClearance](#)" program. Alternatively, the clearance certificate can be obtained by the contractor from WSIB and provided to the charity, or the charity may call WSIB and request one directly by telephone. Clearance certificates are valid for 90 days; if a construction project extends for a longer period, an updated clearance is needed.

Charities should also note that the WSIB interprets the term "construction work" very broadly to include electrical work, inside finishing, roofing, siding and outside finishing, and office furniture installation, among other industries. For a complete list, see WSIB's classification of construction services set out in "[Class G – Construction](#)" of its *Employer Classification Manual*.

For **non-construction** contractors hired by charities (such as janitorial or security companies), the rules remain unchanged. Charities are not required to obtain clearance certificates, but if they do not, they could still be "on the hook" for unpaid premiums if the contractor was required to be registered with WSIB and was not, or was registered but behind in premium payments. For a list of the non-construction industries subject to this requirement, see Schedules 1 and 2 listed in [Ontario Regulation 175/98](#).

Certain non-construction contractors who are considered "independent operators" (i.e., individuals who are self-employed and have no other workers) may not be required to register with WSIB.⁷ If so, and if they chose not to purchase optional WSIB insurance, there is no need for a clearance certificate.⁸ However, for construction work, clearance certificates will be mandatory, even if the individual is an independent operator (subject to limited exceptions).⁹

Finally, it should be noted that a clearance certificate does not necessarily immunize a charity from a personal injury lawsuit which could be brought in the event of a workplace accident. Rather, WSIB waives its right to collect outstanding WSIB premiums owed by the contractor. In all cases, charities should consult with their insurance brokers to ensure that adequate coverage is in place for accidents or injuries that may occur on their premises or to their staff/volunteers while they are working.

Resources

For more information, charities may find the following links helpful:

[Clearance certificates \(for non-construction services\)](#)

[Clearance certificates \(for construction services\)](#)

[FAQ – Mandatory Coverage in Construction](#)

[Be Registered. Be Ready.](#)

¹ Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, ss. 141(1), (2).

² O. Reg 175/98 at paras. 24 and 13(ii) of Schedule 1, Class I – Other Services.

³ Supra note 1, s. 141(10).

⁴ Ibid., ss. 141.1., 141.2.

⁵ For information about who is required to have coverage in the construction industry, see WSIB’s website “Who needs coverage” at beregisteredbeready.ca.

⁶ Ibid., ss. 151.2, 158(1).

⁷ Ibid., ss. 11-12.1.

⁸ If the independent operator has purchased optional insurance from WSIB, the charity should obtain a clearance certificate. In any case, if the charity is itself registered with WSIB, it may be necessary to obtain a determination from WSIB that the individual is an independent operator and not an employee of the charity. For more information, see WSIB’s website on Independent Operators.

⁹ See note 5.

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