

Status – Labour contractor category

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OBJECTIVE

1. This practice directive examines the labour contractor category and criteria, and aids in the interpretation of *Assessment Manual Item: AP1-1-7*.

INTERPRETATIVE GUIDELINES

2. There are only three statuses for assessment purposes in Part 1 of the *Workers Compensation Act*: employer, worker, and independent operator. The labour contractor category has been created by the Board to aid in determining status but is not itself a status for any purpose.
3. A labour contractor is a sole proprietor or a partner who,
 - has workers and supplies labour only to one firm at a time;
 - is not defined as a worker, does not have workers, or supply major materials or major revenue-producing equipment but who contracts a service to two or more firms on an ongoing simultaneous basis; or
 - may or may not have workers but contracts a service including one piece of major revenue-producing equipment to a firm or individual.
4. *AP1-1-7*'s “Explanatory Notes” dictate that,

For persons who are not covered by the normal criteria for ‘independent firms’ set out in the POLICY in Item AP1-1-3, the Board uses a category called “labour contractors” in determining whether a person is a worker or independent firm under the Act.

5. Thus, in determining status, a Board officer must first consider whether the individual is covered by *Assessment Manual Item: AP1-1-3*'s normal criteria for independent firms; and if the individual's status is then uncertain or the probabilities are more or less balanced between worker and independent operator, the three labour contractor criteria described and developed in *AP1-1-7* are considered and applied.

8. Appendix “A” to this practice directive is a non-exhaustive, descriptive list of established major revenue-producing equipment. A Board officer must use reasoned discretion in determining whether a particular piece of equipment is major revenue-producing equipment in the circumstances of an individual case.

II “CONTRACT A SERVICE INCLUDING ONE PIECE OF MAJOR REVENUE-PRODUCING EQUIPMENT”

9. This criterion requires the service provider to supply a piece of major equipment listed in Appendix “A” to this practice directive and to contract to supply personal labour and that piece of major equipment.

III “CONTRACT A SERVICE TO TWO OR MORE FIRMS ON AN ONGOING SIMULTANEOUS BASIS”

10. This requires the individual service provider to provide personal labour,
- under two or more concurrent contracts within the same industry,
 - to persons unaffiliated to the service provider and to each other,¹ and
 - to contemporaneously discharge each such contract on a regular and continuing basis.

¹ This branch of the test does not apply if the service recipient is the Provincial government. That is, if the service provider has ongoing contracts with two or more separate ministries, the Board will allow registration based on the simultaneous contracts.

APPENDIX “A”

A NON-EXHAUSTIVE LIST OF INDUSTRY-SPECIFIC MAJOR REVENUE PRODUCING EQUIPMENT			
EQUIPMENT	DESCRIPTOR	EXAMPLE(S)	INDUSTRY
Agricultural equipment		Tractor, hay-baler, harvester, combine, hoof trimmer	
Arc welding equipment			
Boom boat			Forestry
Chainsaw ²			Classification Units 703013 and 703002
Computer software	Not commercially available from any other supplier except the individual providing the use of the software. ³		
Fishing boat			Fishing
Grader			
Heavy logging equipment		Skidder, feller-buncher, grapple loader	Logging
Horse	As part of a horse-logging contract.		
Light-duty excavating equipment		Backhoe, front-end loader, bobcat	
Mobile crane			
Oil well servicing and drilling equipment		Truck-mounted gin-pole; perforating gun and dewaxer; picker, steamer, vacuum, and hot oil truck; ditchwitch; power tongs; drilling rig	
Tracked earth-moving equipment		Bulldozer, excavator	
Truck-mounted mobile welding unit			
Truck-mounted pressure washer			
Vehicle: Ambulance			
Vehicle: crew transport		Crummy	Transport
Vehicle: dual-axle truck		Logging truck, tractor-trailer truck, dump truck, oilrig transport truck	
Vehicle: single-axle			The trucking, delivery, and courier industries
Vehicle: single-axle truck	Used for construction cleanup		
Vehicle: pilot car			
Vehicle: custom outfitted	Custom outfitted to provide repairs or maintenance of equipment for a particular industry	A truck outfitted with cherry-picker, large cable reel, or with other similar, extensive modifications	

² Chainsaws are deemed major revenue-producing equipment for contractors classed in Classification Unit 703013 [Manual Tree Falling and Bucking] and Classification Unit 703002 [Brushing and Weeding or Tree Thinning or Spacing (not elsewhere specified)], and may be considered such in exceptional circumstances in other classification units.

³ This does not include subcontractors who create software on order specifically at the request of only one client.