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## **NEW WSIB POLICIES FOR CONSTRUCTION WORK IMPACT CHARITIES AND NOT-FOR-PROFITS**

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*By Barry W. Kwasniewski\**

### **A. INTRODUCTION**

As of January 1, 2013, the Government of Ontario made coverage under the *Workplace Safety and Insurance Act, 1997*<sup>1</sup> (“WSIA”) mandatory for most workers in the construction industry. These important changes will affect all charities and not-for-profits which engage contractors for construction work in Ontario. Although the new rules for construction work were in place as of January 1, 2013, actual enforcement of these rules only commenced as of January 1, 2014. This Bulletin reviews the legislative requirements now in force, which are mandatory for any charity or not-for-profit which hires contractors to carry out construction work.

### **B. COMPULSORY COVERAGE**

Under the WSIA, covered workers who are injured in a work related accident or develop a work related illness are entitled to statutory benefits, including income replacement and coverage for health care costs. In order to enhance coverage for workers in the construction industry, new rules came into effect as of January 1, 2013, which expanded the participants in the construction industry that are required to have WSIA coverage. These participants now include not only the construction workers who were previously covered, but also independent operators, soles proprietors, partners in construction partnerships and executive officers in construction corporations, which are all deemed “workers” under the legislation. Therefore, these new

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<sup>1</sup> *Workplace Safety and Insurance Act, 1997*, SO 1997, c16, Schedule A.

rules affect both small and large construction businesses. The new rules, though, do not apply to home renovation work, which is an exemption under the legislation.

The Workplace Safety and Insurance Board (“WSIB”), which is the administrative body that oversees the WSIA, interprets the term “construction work” very broadly to include not only building construction and renovation, but also electrical work, roofing, siding and inside and outside finishing, office furniture installation, among other construction related activities. The WSIB’s classification of construction services is set out in its employment classification manual, which can be accessed at the WSIB website at <http://www.wsib.on.ca/en/community/WSIB>.

### **C. WSIB CLEARANCE CERTIFICATES**

For charities and not-for-profits, the practical legal implication arising from these changes is that these organizations must obtain a WSIB clearance certificate from the contractor or the subcontractor before any construction work begins. A clearance certificate is a document issued by the WSIB confirming that the contractor/subcontractor is registered with the WSIB and is in good standing with respect to payment of its WSIB premiums. The legal obligation to obtain a clearance certificate is both on the hiring party (i.e. the charity or not-for-profit) and the contractor. If there is no clearance certificate, no construction work can be performed. Once a certificate is obtained, the WSIB will waive its right to hold the hiring party liable for the contractor’s unpaid WSIB premiums and any other amount owing to the WSIB for the duration of the certificate. If the hiring party does not obtain this certificate and the contractor owes payments to the WSIB, then the hiring party may be held liable for the unpaid premiums and any other amounts.

The clearance certificate must also be valid for the duration of the work. Since a clearance certificate is valid for ninety days from the date of issuance, if any work extends beyond the ninety day period, the certificate must be renewed.<sup>2</sup> If a hiring party or contractor/sub-contractor does not comply with the WSIA, such as by failing to satisfy the requirements of a clearance certificate in construction, it is an offence under the WSIA. The penalties for a conviction under the WSIA are: \$25,000, or imprisonment up to 6 months, or both (for individuals), and a \$100,000 fine (for corporations).<sup>3</sup> The WSIB has allowed the construction

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<sup>2</sup> “Who needs a clearance number?” is online at <http://needwsibcoverage.ca/who-needs-clearance>

<sup>3</sup> Document 22-01-05 “Offences and Penalties – General” is online at:

<http://www.wsib.on.ca/en/community/WSIB/230/OPMDetail/24347?vnextoid=58fcc0d9ca3d7210VgnVCM100000449c710aRCRD>

industry one year to adapt to these new rules. However, as prosecutions may commence as of January 1, 2014, the consequences for non-compliance will be serious. For charities and not-for-profits, this means if a contractor is hired to do construction work from January 1, 2014 on, a clearance certificate is required. Charities and not-for-profits cannot rely on the contractor's verbal assurances – the certificate must be obtained.

## D. CONCLUSION

The message for charities and not-for-profits hiring contractors for construction work in Ontario is clear, insist on a valid WSIB clearance certificate prior to any work being commenced on your premises. If the charity or not-for-profit directly hires any subcontractor to carry out a portion of the work, insist on a clearance certificate from the sub-contractor as well. If the contractor/subcontractor does not comply, or takes the position that WSIB coverage is not necessary, do not hire the contractor, as doing so will expose the charity or not-for-profit to potential significant statutory penalties.