FTR Now

Bill 119 – What You Need To Know

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Bill 119, the *Workplace Safety and Insurance Amendment Act, 2008*, makes insurance coverage mandatory for certain categories of persons operating in the construction industry (independent operators, sole proprietors, partners in partnerships and executive officers of a corporation). This *FTR Now* outlines these significant new changes and suggests the next steps individuals contracting with contractors and subcontractors should be taking in light of Bill 119.

BACKGROUND

The *Workplace Safety and Insurance Act, 1997* (Act) allows for optional Workplace Safety and Insurance Board (WSIB) insurance coverage for independent operators, sole proprietors, partners in partnerships and executive officers of corporations (collectively, the "Categories").

Bill 119, the *Workplace Safety and Insurance Amendment Act, 2008*, makes insurance coverage mandatory for these Categories of persons in the construction industry effective January 1, 2013. On January 1, 2012, a free, "voluntary pre-registration" period of one year commenced during which affected employers may register electronically on the WSIB website, through the WSIB's eServices. Premiums will not become due until January 1, 2013. Where pre-registration has occurred, the WSIB will contact the individual at the end of 2012 to confirm registration information before a WSIB account is activated for coverage in 2013.

After January 1, 2013, independent operators, sole proprietors, partners in a partnership or executive officers of a corporation will also be required to register with the WSIB within ten days of occupying one of these Categories. In the event that a material change in circumstances later occurs then notification to the WSIB is required within ten days of the date of the material change.

Construction businesses are allowed to select one executive officer or partner to apply for an exemption from coverage. This must be a person who does not perform any construction work on any building site, including on-site supervision. The WSIB intends to establish a specific premium rate for coverage commencing in 2013 where an executive officer must be covered.

Coverage is not required if these Categories engage in home renovation construction work.

NEW REQUIREMENTS

Bill 119 imposes the following requirements:

- the person who directly retains a contractor or subcontractor is required to ensure the contractor or subcontractor complies with all payment obligations under the Act. That person may become liable in cases of non-payment or non-compliance;
- a person who directly retains a contractor or subcontractor to perform construction work is required to obtain a clearance certificate from the WSIB showing that the contractor or subcontractor has registered with the WSIB and has complied with all obligations under the Act. The contractor or subcontractor is not permitted to perform construction work when a clearance certificate is not in effect and the person must not permit construction work to be performed where no clearance certificate is in effect;
- a contractor or subcontractor is prohibited from performing construction work for a person without a valid clearance

certificate. If the contractor or subcontractor has the clearance certificate revoked or if it expires during the work, then the person must ensure that a valid clearance certificate is obtained before the construction work is completed;
- the clearance certificate will confirm the period during which the certificate is in effect (90 days);
- the person must retain the clearance certificate for at least three years, and it must be produced for inspection at the request of the WSIB; and
- a contractor or subcontractor is prohibited from performing construction work for a person without a valid clearance certificate. If the contractor or subcontractor has the clearance certificate revoked or if it expires during the work, then the person must ensure that a valid clearance certificate is obtained before the construction work is completed.

These requirements do not apply to a person who directly retains a contractor or subcontractor to perform home renovation work. Exemptions for home renovation work means construction work performed by one of the Categories on an existing private residence that is occupied or to be occupied by the person or a member of the person's family who directly retains a contractor or subcontractor. An existing private residence includes a house, condominium unit, apartment unit, seasonal or recreational residence (e.g. cottage), and incidental structures not used for commercial purposes (e.g. garage, shed, fences, etc.).

OFFENCES AND PENALTIES

Failure to comply with Bill 119 may result in the person being guilty of an offence under the Act which can be prosecuted under the *Provincial Offences Act*. A person convicted is liable to a fine not exceeding $25,000 or imprisonment not exceeding six months or both. A corporation is liable to a fine not exceeding $100,000.

In addition, Section 141 of the Act provides that the person who directly retains the contractor or subcontractor who fails to pay WSIB premiums or who has outstanding amounts owing, may be deemed to be liable.

WHERE THIRD PARTY INSURANCE COVERAGE ALREADY EXISTS

Where mandatory WSIB coverage is required it will be up to the contractor or subcontractor who already has arranged for private, third-party insurance coverage to determine the mix of coverage to be established. However, private insurance is not a substitute for the required WSIB coverage.

NEXT STEPS

In 2012 the WSIB will coordinate a communications initiative focusing on the provisions of Bill 119. It will also issue five new policies addressing expanded compulsory coverage, insurable earnings, offences and penalties, clearance certificates and e-clearance certificates for the construction industry.

RECOMMENDATIONS FOR EMPLOYERS

Employers which currently have a policy in place covering contractors and subcontractors should extend the policy to ensure compliance with Bill 119. Those which do not have a policy should develop one.

In either case, it is recommended that at a minimum:

- employers should have written contracts with contractors which establish the nature of the business relationship;
- employers should obtain a clearance certificate at the commencement of the tendering/bidding process, at the commencement of work, during the work and at the conclusion of work;
- employers should establish contract hold-backs for their protection where a contractor or subcontractor is not in compliance with Bill 119; and
- employers should be invoiced for work on a regular basis and the invoicing document should include separate

charges for labour, expenses and applicable taxes.

Should you have any questions regarding Bill 119, please contact any member of our Workplace Safety and Insurance Practice Group.

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