

Who Do I Need to Cover for Workers' Compensation?

Definition of a worker

The primary definition of a 'worker' in the *Workers' Compensation and Injury Management Act 1981* (the Act) is very broad. It covers full-time workers on a wage or salary and also part-time, casual and seasonal workers, workers on commission and piece workers. Contractors and sub-contractors may also be defined as 'workers', depending on the circumstances of their working arrangement.

The definition of 'worker' may be broken up into two main parts: primary and extended.

Primary definition

This covers any person who works under a contract of service or apprenticeship with an employer. The contract may be expressed or implied, oral or written. A large part of the workforce is covered under this part of the definition, including workers who:

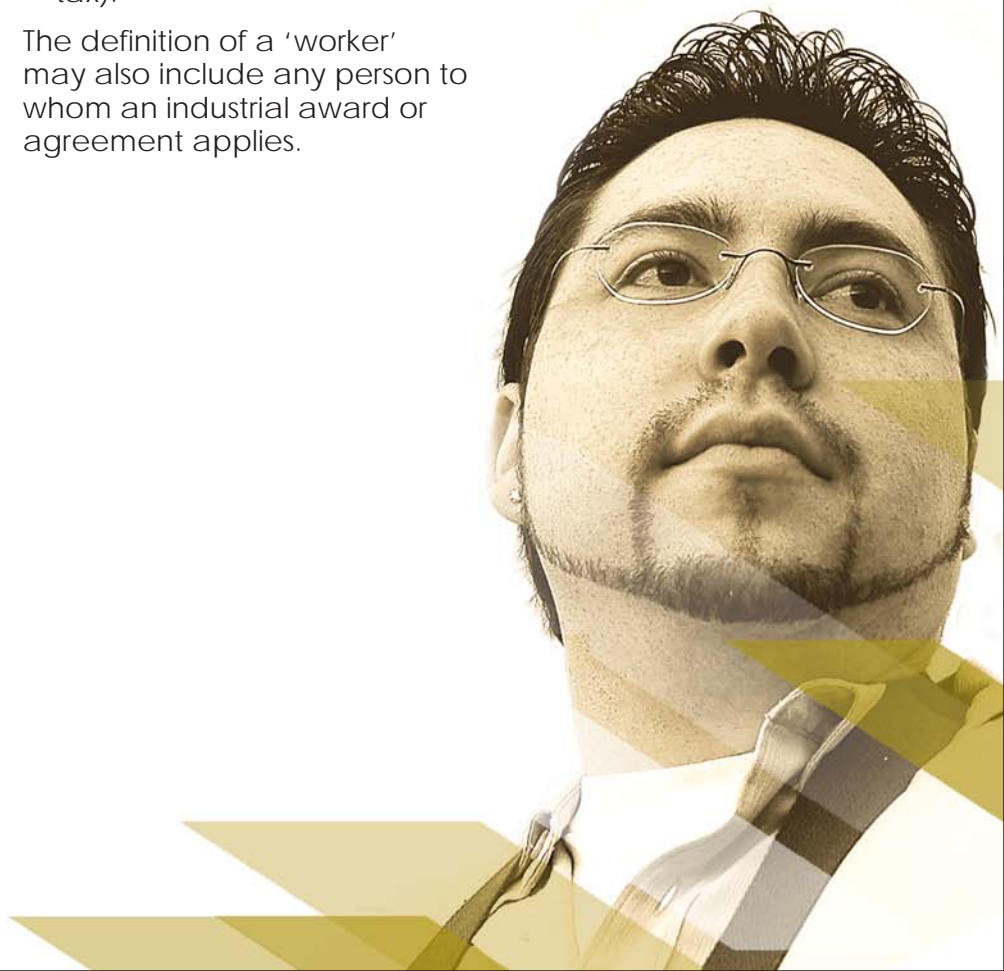
- work for salary or wages
- work set hours of work
- may be fired by the employer
- work for only one employer
- are supervised and controlled.

Extended definition

This covers any person who works under a contract for service. Many people who work on a contract or sub-contract basis may be covered under this part of the definition and it may cover workers who:

- are paid on piece rates, hourly rates or per job
- work for the employer on a 'one-off' or per job basis
- do not have set hours of work
- work for more than one employer
- work unsupervised
- pay 20% prescribed payments (sub-contractor's tax).

The definition of a 'worker' may also include any person to whom an industrial award or agreement applies.



What about contractors and sub-contractors?

A contractor or sub-contractor may be defined as a 'worker' if the following occurs:

1. The contractor/sub-contractor is engaged by another person to do work which is for the purpose of the other person's trade or business.
2. The contractor/sub-contractor is paid in substance for his or her personal manual labour or services.

If the contractor/sub-contractor supplies material and/or employs workers, then there is doubt whether he/she would be classified as a 'worker'.

Cover for the contractor's workers

Under section 175 of the Act, 'if a person (the 'principal') contracts with another person (the 'contractor') to perform work which is for the purpose of the principal's normal trade or business', then both the principal and the contractor are liable to cover any workers the contractor may employ. Both parties are jointly, and severally liable to cover the contractor's workers. In other words, each must have a workers' compensation policy.

If the contractor in turn sub-contracts the work to a sub-contractor, then all parties, including the principal, the contractor and the sub-contractor, are liable to cover any workers the sub-contractor may employ.

Should I cover family members?

Where family members are employed by you (or contracted to you) and live in the family home, it is optional whether you cover them for workers' compensation. If cover is required, family members must meet the definition of a 'worker' under the Act and their name and the work they do needs to be disclosed on the policy, together with an estimation of their wages/salary.

If your family members live away from home and work for you, they fall within the definition of a 'worker' and must be covered by workers' compensation insurance.

Should I cover working directors?

A working director means a director of the company who executes work for or on behalf of the company, and whose earnings as a director of the company, by whatever means, are in substance for personal manual labour or services.

It is optional for a working director's company to cover their directors for workers' compensation.

When obtaining insurance for a working director, the company applies for insurance on the basis their director is a 'working director' as defined above. The company provides the necessary information to the insurer and once the policy is in effect, the working director is deemed a worker under the Act.

Non-working directors and public company directors are excluded and not able to be covered for workers' compensation.

What is an avoidance agreement?

An 'avoidance arrangement' is an arrangement that is contrived to enable a person (A) to have the benefit of the services of another person (B) by entering into an arrangement that results in B not being deemed a 'worker' as defined by the Act.

If you are concerned about any of the scenarios mentioned in this fact sheet, it is important that you discuss these further with your insurer.

Disclaimer

This fact sheet is intended to provide general information only. You should not act or omit to act on the basis of anything contained herein. You should seek appropriate legal/professional advice about your particular circumstances.