

A guide to

Outworkers

April 2000



www.workcover.com

Introduction

This brochure has been produced to help employers and/or workers who may be uncertain about coverage under the Workers Rehabilitation and Compensation Act, 1986.

The information provided in this publication is correct at the time of printing and is provided as general information only. The specific issues relevant to your workplace should be considered in light of this general information.

To ensure correct information is being used, or if you are in any doubt after reading this brochure,

please telephone WorkCover Corporation on 13 18 55, Toll Free 1800 188 000 (for SA outside the metropolitan area) or Toll Free 1800 888 508 (for Interstate callers).

Translating and interpreting

If you would like more information in your language, please call the Telephone Interpreting Service on 8266 1990 and ask them to contact WorkCover Corporation on (08) 8233 2001.

Who is a worker?

The Workers Rehabilitation and Compensation Act, 1986 provides for compensation and rehabilitation of workers who sustain disabilities at work. Eligibility for compensation depends on whether a person is a 'worker' as defined under the Act.

Section 3 of the Act states that a 'worker' means a person by whom work is done under a 'contract of service'

(whether or not as an employee)

Contract of service normally represents a work relationship formed between an employer and employee.

Where a person is working under a contract for service, that person is not entitled to compensation as they are not workers under the Act. This term is used when a person is considered to be a true independent contractor.

However, cover is extended to persons working under a contract for service in certain circumstances.

These circumstances are prescribed under the Act and are known as 'prescribed classes of work' or 'prescribed work'.

Important Notes

1 Whether a person is employed ongoing, or for a short period, eg. for as little as one hour on a given day, or on a casual basis, an obligation exists on the employer to include remuneration paid to any such worker(s) in their calculation of levy payable.

2 A principal should ensure that a contractor employing a worker(s) is, at all times when performing work for the principal, registered as an employer with WorkCover Corporation.

If a contractor (who employs) is not registered, Section 3(6)* may apply and the principal be deemed the employer. It is therefore in the principal's best interests

to ensure that any contractors, who may also employ, are registered and paying levy on their workers.

- Section 3(6) - Where in a prescribed industry or in prescribed circumstances a person (the principal) contracts with another person (the contractor) for the performance by the contractor of work undertaken by the principal, the principal shall, for the purposes of this Act, be deemed to be the employer of workers employed by the contractor.

If you need any further assistance in deciding whether a person is a worker, please contact a Customer Service Officer on:-

Telephone: 13 18 55 Facsimile: (08)8233 2990
Toll Free: 1800 188 000 (for SA outside the metropolitan area)
Toll Free: 188 888 508 (for Interstate callers)

Outworkers

An outworker is engaged for the purposes of another person's trade or business, to work on, process or pack articles or materials in a private home or any place other than business or commercial premises. The majority of outworkers work from their own home.

A person is deemed to be a worker where he/she performs work as an outworker and provided any aspect of that work is governed by an award or industrial agreement (whether or not they are actually 'paid' under the award) which mentions outworkers, that work is 'prescribed work' for the purposes of defining the Contract of Service.

(Outworkers are defined as having the same meaning as in the Industrial Et Employee Relations Act 1994. Currently outworkers are covered by Federal Awards Et South Australian Awards)

These awards include most of the clothing industries as well as boots, shoes and hats.

If the work is not governed by an award, then the individual circumstances must be considered to ascertain if a contract of service exists.

An employer must, if employing outworkers, register and pay levy on the full contract amount paid, less any expenses incurred by the worker that are reimbursed by the employer.

If an outworker employs others to perform part of the work then there is a requirement for the outworker to register and pay levy on the workers.

Under current guidelines there is no need for the principal to pay levy on an outworker who employs **unless** that person is not registered. If an outworker who employs is not registered, the principal may be deemed the employer. It is therefore in the principal's best interest to ensure that any outworkers, that they contract with and also employ, are registered and paying a levy on their workers.

If further clarification is needed please contact WorkCover Corporation for assistance to establish if a contract of service exists.