

WorkCoverSA

A guide to outworkers

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Disclaimer

The information produced by WorkCoverSA in this publication is correct at the time of printing and is provided as general information only. In utilising general information about workplace health and safety and injury management, the specific issues relevant to your workplace should always be considered. This publication is not intended as a substitute for the requirements of the *Workers Rehabilitation and Compensation Act 1986* or the *Work, Health and Safety Act 2012*.

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Introduction

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

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 guide, please call WorkCover on 13 18 55.

Who is a worker?

The Act provides for the rehabilitation and compensation of workers who suffer an injury arising from their employment.

The Act requires that an employer register with WorkCover and pay a premium based on remuneration paid to workers in their employ (unless they are exempted – see the WorkCover website for information on the small employer registration exemption). Under the Act, ‘worker’ is a broader definition than ‘employee’.

Whether someone is deemed a worker under the Act needs to be considered on a case-by-case basis, from the viewpoint of the worker-employer relationship, against well-tested common law principles.

The definition of ‘contract of service’ under the Act establishes that when a person (the principal) contracts with another person (the contractor) - and this includes otherwise independent contractors - for the purposes of the contractor undertaking work for the principal, the principal is deemed the ‘employer’ and the contractor is deemed the ‘worker’.

Important notes

Whether a worker is engaged to perform work on an ongoing basis 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 the calculation of premium payable.

A principal should ensure that an otherwise independent contractor who employs a worker(s) is, at all times when performing work for the principal, registered as an employer with WorkCover. If a contractor (who employs) is not registered, then under section 3(6) of the Act the principal is deemed the employer. It is therefore in the principal’s best interests to ensure that any contractors who also employ are registered with WorkCover.

Section 3(6) of the Act – states:

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.

Regulation 5 Sub-regulation 7 of the *Workers Rehabilitation and Compensation Regulations 2010* states:

For the purposes of section 3(6) of the Act, a prescribed circumstance is where a person (the principal) contracts with another person (the contractor) who is not registered as an employer under the Act.

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, and 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 *Fair Work Act 1994*. Currently outworkers are covered by Federal Awards and South Australian Awards)

These awards include most of the clothing industries including 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 premium 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 a premium for those workers. There is no need for the principal to pay premium for 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 premium for their workers.

If further clarification is needed please contact WorkCover on 13 18 55 for assistance to establish if a contract of service exists.

WorkCoverSA
Enquiries: 13 18 55
400 King William Street Adelaide South Australia 5000
Fax: (08) 8233 2990
Email: info@workcover.com
Website: www.workcover.com

Free information support services: If you are deaf or have a hearing or speech impairment you can call WorkCoverSA through the National Relay Service (NRS):

- TTY users can phone 13 36 77 then ask for 13 18 55.
- Speak & Listen (speech-to-speech) users can phone 1300 555 727 then ask for 13 18 55.
- Internet relay users can connect to NRS on www.relayservice.com.au then ask for 13 18 55.

For languages other than English call the Interpreting and Translating Centre (08) 8226 1990 and ask for an interpreter to call WorkCoverSA on 13 18 55. For Braille, audio or e-text call 13 18 55.

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