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## When Must U.S. Companies Register with Ontario Workers' Comp Authorities?

POSTED BY [KEVIN MACNEILL](#) ON JULY 01, 2012



In Ontario, workers' compensation is administered by the Workplace Safety and Insurance Board (WSIB), which is governed by the *Workplace Safety and Insurance Act, 1997* (WSIA). Appeals from decisions of the WSIB are heard by the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

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In its recently published annual review of significant cases from 2011, the WSIAT highlighted [Decision No. 382/10, 2011 ONWSIAT 707](#), which considered the issue of whether employers whose operations are based outside Ontario but whose employees occasionally work in Ontario are considered "employers" within the meaning of

the WSIA such that they are required to register with the WSIB and remit premiums just like other employers in the province.

In the case concerned, the WSIAT affirmed a WSIB decision that an employer incorporated under the laws of Michigan and operating in Troy, Michigan was required to register with the WSIB and remit premiums, even though it had purchased workers' compensation insurance for its employees in compliance with Michigan law. One of the employer's workers resided in Ontario but regularly worked in Michigan. However, as part of his duties he also travelled to a number of manufacturing facilities, notably one in Ontario, which later led to his filing a WSIB claim for chemical exposure.

Following a detailed review of the applicable law and policy, the WSIAT focused on WSIB policies [12-04-12](#) ("Non-Resident Workers") and [14-02-02](#) ("Registration"), which taken together provide that employers from outside Ontario must register with the WSIB when (a) they employ Ontario residents in a compulsorily covered operation in Ontario or (b) they employ workers who are not Ontario residents but who work in Ontario, if the employer has a "substantial connection" to Ontario.

For the WSIAT, both of these scenarios involve a sort of "substantial connection" test, where such a connection is considered to exist when a worker resides in Ontario and performs work in Ontario on behalf of a foreign employer.

In the case of non-resident workers, the substantial connection to Ontario (and corresponding duty to register) is largely a function of how much time a worker spends working in Ontario. U.S. employers should keep in mind the following guiding principles under policy 12-04-12:

Although each case must be decided on its own facts, it is generally considered that a worker who works in Ontario for

- 5 or fewer days in the course of a year usually does not have a substantial connection with Ontario
- 6 to 10 days in the course of a year may have a substantial connection with Ontario if the surrounding circumstances suggest that such a connection exists
- 11 or more days in the course of a year usually has a substantial connection with Ontario.

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When applying these time frames, the decision-maker considers whether the worker worked in Ontario for the entire day or for only several hours.

Other factors include

- whether the worker also makes similar trips to other jurisdictions outside the home jurisdiction
- whether trips to Ontario are regularly scheduled or anticipated
- whether the worker simply passes through Ontario or actually performs employment functions in the province
- whether trips to Ontario are strictly for employment purposes or whether they also have a personal component
- the place where the contract of employment was made
- the place where the worker is paid, and
- whether, if Ontario residency status is doubtful, the worker would have worker status under workers' compensation legislation in another jurisdiction.

At a certain level, there is an intuitive appeal to the WSIAT's concern, expressed in this case, that:

In order for the Board to provide effective administration of claims, it is necessary that benefits for a worker be supported by corresponding insurance premiums paid by an employer. To find otherwise would be to require employers with a base of operations in Ontario to provide insurance for foreign employers who have workers who meet the criteria of a substantial connection to the province but who do not contribute to the insurance fund. In my view, this is not consistent with the requirement that the insurance plan be administered in "a financially responsible and accountable manner".

However, as the WSIAT also noted, this case highlights a competing consideration. We live in an increasingly globalized economy with greater worker mobility than ever before. In the case under study, there was no inter-jurisdictional agreement which could relieve the U.S. employer from duplicate premium payment. Indeed, as the WSIAT noted, the WSIA only currently allows for such agreements among Canadian workers' compensation authorities. There is thus not a level playing field for all employers who do business in Ontario. Although the WSIAT may have been right to decide that it was not appropriate in this case, and beyond its jurisdiction, to integrate the legal rules that apply to businesses across jurisdictions this may be something that our legislators and policy makers may want to explore in the current context of pending WSIB reform.

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