

Workers Compensation Information Sheet

If your group pays for the services of an instructor on a regular, seasonal or casual basis, that instructor is classed as an employee and the group is classed as the employer. By law, this means that your group must take out or access Workers Compensation insurance. For more detail on this see the Work Cover WA website.

<https://www.workcover.wa.gov.au/employers/>

Please note that there are significant penalties for not holding workers compensation insurance where it is required, details of which can be found using this link:

<https://www.workcover.wa.gov.au/employers/costs-of-non-compliance/>

To help reduce the cost of insurance for groups, HEWA has arranged with an insurance broker (who will act on HEWA's behalf), to collect all the relevant information from each group and supply it to the insurance provider. This arrangement will enable HEWA to act as an administrator and take over most of the paperwork involved thereby reducing the load on individual groups.

The Service Providers/Instructors Contract for Service will be with HEWA so that they are covered under HEWA's Workers Compensation insurance. If more than one group uses the same Service Provider/Instructor, there will be a separate contract for each group.

HEWA will invoice groups at the start of each term for the cost of the Service Provider/Instructor. HEWA will then pay the Service Provider/Instructor as per the terms of the Contract for Service. It will be the group's responsibility to ensure that they have collected from members, the funds necessary to pay the invoice from HEWA.

Service Providers/Instructors are invited to access the eLearning module on Risk Management and Work, Health and Safety.

Please note if you have any questions regarding this matter that are not covered in the section below then please contact the Coordinator at coordinator@hbln.org.au.

Frequently asked questions

If I hire an instructor as a contractor do I need to take out Workers Compensation Insurance?

Unless a contractor has a Pty Ltd company structure in place then Yes the group does need to take out or access Workers Comp. Insurance. See link below for details on contractors and subcontractors. It's also worthwhile noting that the definition for an employee is different for the Tax Office and Superannuation. Groups do not need to withhold tax or pay superannuation to their instructors.

<https://www.workcover.wa.gov.au/employers/understanding-your-rights-obligations/covering-your-workers/contractors-subcontractors/>

How do I decide if an instructor should be classed as an employee or worker?

Workers' compensation law states that employers must have workers' compensation coverage for anyone who is defined in the legislation as a 'worker'.

If you are a group who is paying an instructor/teacher/parent to provide a service then your group is legally required to take out Workers Compensation insurance. The only possible exception to this is if the instructor/teacher/parent has set up their own Pty Ltd company.

Parent teachers who are paid for their services by a reduced class fee(s) are deemed workers and need to be covered by Workers Comp. insurance.

Definition of a worker

The legislation provides a very broad definition of a 'worker'. It covers:

- full-time workers on a wage or salary
- part-time, casual and seasonal workers
- workers on commission
- piece workers
- working directors (companies have an option as to whether working directors who have some ownership of the company and are 'workers' under the Act are to be insured)
- contractors and subcontractors may also be defined as 'workers', depending on the circumstances of their working arrangement
- worker receiving 'payment in kind'.

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 you. The contract may be expressed or implied, oral or written. A large part of the workforce is covered under this part of the 'worker' definition, including:

- full-time and part-time workers

- casual workers
- seasonal and piece workers
- workers on salary or wages
- workers supervised and controlled by an employer
- workers who may be fired by an employer
- workers who work for only one employer
- workers with set hours of work.

Extended definition

This covers any person who works under a contract for service. Many people who work as contractors or sub-contractors 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 per cent prescribed payments (sub-contractor's tax)
- are covered by an industrial award or agreement.

See [A Technical Note on Contractors and Workers Compensation](#) for more detail.

The instructor says they have their own insurance. Do I still need to take out Workers Comp. Insurance?

If the instructor meets the definition of a worker as specified above then you must still have Workers Comp Insurance. If an accident did occur and fault was assigned to the group then the instructors Workers Comp Insurance provider would very likely sue the group to recoup their expenses.

What are the penalties involved?

The person in any group who is paying an instructor, can have fines of over \$5,000 imposed for not having the necessary insurance cover. If a claim is made it could cost that person between \$20,000 and \$600,000 to defend the action in court and pay the various fines and claims. This effectively means that whoever is making the payments for the group could lose their house, savings etc.