# Best Practice Tool - Form 1000

## Section 1 - Backgrounder to Form 1000

### What is the purpose of Form 1000?

Form 1000 is intended to guarantee a minimum level of protection and to ensure all people who are physically on-site are identified and accounted for in the event of an incident or accident related to an individual's health or safety. There is currently no requirement for the constructor to submit a completed Form 1000 to the Ministry of Labour, Training and Skills Development. However, the form must be at the project site while the employer is working there. As a result, your completion of the form will not likely be recorded by the Ministry, unless an incident or accident occurs on site.

The form itself is required to be completed if you are physically on a construction site for the purpose of completing work related to the project (ie. site visit). By completing the form you are thereby attesting that you are an employer engaged in construction and present on the construction site. The form is not mandated where work is completed remotely or where relative work is not completed physically on site.

The constructor of the project is required to ensure that all individuals onsite complete the form and must ensure a copy of each completed form by an employer is kept at the project on-site while the employer is working there. It is also a means of the contractor registering who is physically onsite as they assume responsibility for safety on-site.

The form applies to individuals who are constructors and employers engaged in construction. The constructor must ensure a copy of each completed form by an employer is kept at the project on-site while the employer is working there.

The included information is for general reference only.

## Section 2 - Applicable Legislation

Form 100 is mandated and enforced under the Occupational Health and Safety Act ("OHSA"), RSO 1990. C.01,O Reg 213/91.

"Construction" is broadly defined under s. 1(1) of the OHSA as including:

> "erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting, the installation of any machinery or plan, and any work or undertaking in connection with a project but does not include any work or undertaking underground in a mine."

"Constructor" is defined under s.1(1) of the OHSA as:

> "a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer."

A "project" encompasses both public and private projects, and is defined under s. 1(1) of the OHSA as:

> "(a) the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, trench, excavation, highway, railway, street, runway, parking lot, cofferdam, conduit, sewer, watermain, service connection, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof, (b) the moving of a building or structure, and
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> (c) any work or undertaking, or any lands or appurtenances used in connection with construction."

"Employer" is broadly defined under s. 1(1) of the OHSA as:

> "A person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services...."

As a result of the broad definitions of "construction" and "project" under the OHSA, the requirement to complete a Form 1000 applies to all construction projects, including new buildings and renovations, public and private projects, and residential and commercial projects.

## Section 3 - To whom does it apply?

The mandate for completion of this form applies to all individuals providing construction services onsite at a construction project, including at a renovation or new build project. This may include a construction manager, general contractor and sub-trades.

Additional individuals who are providing "other" services related to the renovation or new build project may also be asked by the contractor to complete the form.

## Section 4 - Who is considered a constructor?

"Constructor" is broadly defined under the OHSA, Section 1 (1) as:

> "A person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer"

A "constructor" is a party (a person or company) who oversees the construction of a project and who is ultimately responsible for the health and safety of all workers. Every project that is governed by the OHSA has both an owner and a constructor. The constructor must ensure that all the employers and workers on the project comply with the OHSA and regulations.

The constructor will either be the owner of the project or a third party contracted by the owner to undertake the project for the owner. However, an owner who engages an architect, professional engineer or other person solely to oversee the quality control of the work at a project does not necessarily become a constructor. Such an owner could engage a third party as a constructor as well as the person engaged only to oversee the quality control of the project.

In some cases, the owner of the project is also the constructor. When an owner undertakes all or part of project, either by himself or herself, or by contracting work out to more than one contractor or employer, the owner becomes the constructor.

If the owner hires only one contractor to do all the work, then that contractor may be the constructor, depending on the contractual arrangements with the owner. The contractor may, in turn, subcontract work to other people, but he or she remains the constructor for the project, as long as he or she is the only party the owner had contracted to do the work.

The following examples illustrate some common situations for owners of projects, including homeowners:

- When an owner hires only one employer (contractor) to do all the work on a project, then that contractor is undertaking the work and is the constructor. This contractor is often referred to as the general contractor.
  - In the situation above, the general contractor may, in turn, subcontract some or all of the work to another party. He or she remains the constructor for the project, as long as he or she is the only party with whom the owner contracts to undertake the project.
  - In the situation above, if the owner is an employer who assigns his or her workers to work on the same project as the general contractor, he or she may become the constructor if the general contractor was not informed of and did not agree to the presence of the owner's workers and does not exercise control over them. However, if the general contractor agrees to use the owner's workers and to direct their work, he or she will remain the constructor.
- When an owner undertakes a project by contracting with more than one employer (contractor), the owner is undertaking the project and is the constructor.

- When an owner contracts with more than one employer (contractor), the owner may enter into a contractual agreement with one of these employers or a third party to undertake the project on behalf of the owner. Provided the owner has relinquished control over the project and the employer or third party has assumed control, that employer or third party is the constructor, even if the owner is paying the other contractors on the project. The owner may also engage the services of a professional engineer, an architect, or another person solely to oversee the quality control of the project without becoming the constructor.

- Generally, when an owner of a project is an employer and uses his or her own workers to carry out that project, the owner is undertaking the project and is the constructor.

Everyone involved with a construction project should be clear on who is undertaking the project, who the constructor is, and the responsibilities of all of the parties associated with the project.

## Section 5 - How does this impact Interior Designers?

The OHSA does not expressly reference designers or interior designers. However, the case law suggests that if a designer is at the job site "at the behest of" either the constructor or an employer engaged in construction work at the job site, then they must complete a Form 1000.

There may be situations in which a designer is engaged as the "constructor" of a project and is responsible for overseeing the entirety of the project. If this is the case, the designer should be aware of their duties to protect the health and safety of workers on the project.

It is more likely that a designer's role on a project will be limited to providing discrete design services, rather than overseeing the project. If this is the case, the designer is likely subject to the direction or control of the constructor, and will be considered an "employer engaged in construction" for the purposes of Form 1000.

It is therefore recommended that interior designers comply with the legislative requirements and complete the Form 1000 whenever onsite, especially when asked by a "constructor" to complete the form.

## Section 6 - Legal Risks of Non-compliance

There may be significant risks and legal repercussions related to an interior designer refusing to the complete a Form 1000 and therefore being in non-compliance with the OHSA.

An individual who is found to have contravened a provision under the OHSA or the regulations under the OHSA may be fined up to $100,000 or imprisoned for up to twelve months. Any corporation found to have contravened a provision under the OHSA or the regulations may be fined up to $1,500,000. As there are very few cases that have interpreted the requirement that employers complete a Form 1000, the amount and nature of the penalties that may be ordered remains unclear.

In most cases, the "constructor" will be liable for the failure of ensuring that all individuals on a site complete the form, and thus be subject to penalties under the OHSA, which may include fines or imprisonment. However, that does not mean an interior designer cannot also be subject to penalties.

Additional risks of non-compliance may include:

- The constructor kicking you off the site, refusing you the ability to complete work on the project.
- The constructor banning you from the site indefinitely, refusing you the ability to complete work on the project.
- The constructor pursuing a claim against you for breach of contract.

## Section 7 – Insurance Risks of Non-compliance

Professional Liability protects both Interior Designers and the clients they serve.

Professional liability insurance (PLI), commonly known as errors & omissions (E&O), is a form of liability insurance that protects individual designers and/or their companies from an actual or alleged claim for negligence made by a client or other third party.

It does so by defending you or your company from these allegations and pays legal defence costs, financial compensation if found negligent for damages due to injuries, damage to their property, or other damage or loss to such other persons resulting from or arising out of any error, or omission while in the performance of professional services performed as a qualified Interior Designer.

For more detailed information on the importance of Errors & Omissions (E&O), please review *ARIDO's Best Practice Tool, Understanding Professional Liability: Protecting the Public and Yourself.*

It is important for members to understand the potential risks and repercussions of non-compliance with Form 1000, mentioned earlier in this document, and whether non-compliance is covered under your insurance.

While claims include matters such as demands for monetary relief in response to allegations related to providing interior design, the repercussions of non-compliance with Form 1000 are quite different and would not be covered by your insurer as non-compliance relates to fines and penalties which are not covered by an insurance policy.

## Section 8 - Applicable Case Law and Guidance from the Ministry of Labour, Training and Skills Development

*Case Law:*

As stated above, the OHSA does not expressly reference designers or interior designers. Therefore, our interpretation of the requirements to complete a Form 1000 is partly based on available case law, as well as guidance we have received from the Ministry of Labour, Training and Skills Development.

We will update this Practice Tool in accordance with applicable legislation, case law and guidance from the Ministry of Labour, Training and Skills Development.

There are presently very few cases that cite s. 5(1) of O Reg 213/91. The case law has established that the OHSA must be given a broad interpretation, as it is designed to provide a safe workplace for workers. Interior designers that are employers are subject to the general health and safety provisions under the OHSA, regardless of whether they are working on a construction project.

The case law suggests that s. 5 of O Reg 213/91 is applicable to employers who are at the job site for the purpose of carrying out construction and who are subject to the direction or control of the constructor or an employer engaged in construction work at the job site.

In *Universal Workers Union, Labourers' International Union of North America, Local 183 v H & R Developments*, 2011 CanLII 26357 (ON LRB), the Ontario Labour Relations Board (the "OLRB") dealt with the interpretation of s. 5(1) of O Reg 213/91 in the context of a grievance involving the union's business representative being barred from attending at a job site because the union refused to provide the constructor with a Form 1000. The constructor argued that the OHSA required any employer coming onto its project to provide it with the approved registration form, and that the union's business representatives were workers within the meaning of the OHSA. The constructor stated that while the business representative may not be doing construction work, that individual nevertheless faces the same risks as anyone on the site who is engaged in construction work or is on the site at the behest of an employer engaged in construction at that site.

The OLRB cited *Ontario (Ministry of Labour) v United Independent Operators Limited*, 2011 ONCA 33, in which the Court of Appeal held that "because the OHSA is a remedial public welfare statute intended to guarantee a minimum level of protection for the health and safety of workers, it is to be interpreted generously, rather than narrowly."[1] The OLRB stated that it "must give the OHSA a large and liberal interpretation consistent with the objectives of the Act and at the same time undertake a contextual analysis of the issue".[2]

The OLRB held the following with respect to the purpose and scope of s. 5 of O Reg 213/91:

> [A] careful contextual reading of section 5 of O Reg 213/91 persuades us it was not meant to apply to the employer of employees who are at the job site, not for the purpose of carrying out construction, undertaking repairs to equipment or supplying materials or equipment to the site but rather are there on behalf of their employer that is a third party not subject to the direction or control of the constructor for the purpose of conducting an inspection or investigation of the work being carried on at the site.
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> It seems to us the fundamental obligation of section 5 is directed at the constructor ensuring those employers coming on to its project to carry out construction work or to supply material or equipment to enable the project to continue for its benefit provide it with the requisite approved registration form in Form 1000. The employers at the job site at the behest of either the constructor or an employer engaged in construction work at the job site are the employers the constructor must en-

> sure provide it with the approved Form 1000 registration form. The constructor has ultimate control over the selection and identity of those employers coming on to its site and can demand those employers file the requisite Form 1000 registration form before stepping foot onto its site. Employers that are not subject to the direction or control of the constructor and are authorized by law to access the site, such as the employers of municipal inspectors, police officers, firefighters, paramedics, and provincial inspectors or officers are not required to provide a Form 1000 before their officials can enter the site controlled by the constructor. [emphasis added]. [3]

Based on this decision, an interior designer who is conducting work on site "at the behest" of the constructor or an employer engaged in construction work at the job site and "to enable the project to continue" for the constructor is likely required to provide the constructor with a Form 1000 before beginning work at the project.

Based on this decision, an interior designer who is conducting work on site "at the behest" of the constructor or an employer engaged in construction work at the job site and "to enable the project to continue" for the constructor is likely required to provide the constructor with a Form 1000 before beginning work at the project.

*The Ministry of Labour, Training and Skills Development's Interpretation of s. 5 of O Reg 213/91*

As there are very few cases that interpret s. 5 of O Reg 213/91, we contacted the Ministry of Labour, Training and Skills Development on a no-names basis for confirmation whether individuals who are not physically engaged in construction on a project, including engineers, architects and designers, are required to complete a Form 1000. The representative from the Ministry of Labour, Training and Skills Development clarified that anyone who is on site completing work on a project, including engineers, architects and designers, is required to complete a Form 1000. The representative also confirmed that if the individual is completing work for a project, but is working remotely and is not physically on site, that individual would not be required to complete a Form 1000.

This document was produced by the Association of Registered Interior Designers of Ontario with PROLINK Insurance and WeirFoulds LLP.

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## Footnotes

[1] Union, Labourers' International Union of North America, Local 183 v H & R Developments, 2011 CanLII 26357 (ON LRB) at para 15.
[2] Ibid at para 17.
[3] Ibid at paras 19-20.