

WSIB and INTERIOR DESIGN services

The Workplace Safety and Insurance Act and Bill 119 ▼

Bill 119 is an amendment to the *Workplace Safety and Insurance Act* intended to directly affect the construction industry. It essentially makes everyone engaged in construction work (contractors, sub-contractors, independent operators, and partners) entitled to receive benefits if injured on the job. Bill 119 also makes employers pay premiums on their earnings. There are numerous penalties for non-compliance with Bill 119.

The Workplace Safety and Insurance Board (WSIB) policy identifies interior design services as services which are not engaged in construction. The WSIB policy actually identifies it in a separate industry. Interior designers are in what is called an **application industry**. That means that Interior Designers can register with WSIB, if they wish to, but they are not legally required to do so regardless of whether the interior design firm has employees or not.

Interior Designers, who provide interior design services only, are exempt from WSIB coverage. The exemption for interior design services can be found on WSIB's website (www.wsib.on.ca - see *Class I-958-16: Miscellaneous Business Services*).

However, where a design firm or interior designer is engaged in an activity that WSIB considers to be construction, such as design/build, or if the firm directly hires sub-trades on behalf of the client and bills the client for the service provided by the sub-trade, then WSIB considers the firm and/or the interior designer to be in construction. The Interior Designer and/or the firm will be required to register with WSIB and start paying premiums.

Residential Design and WSIB

For those interior designers that exclusively do only residential design and may hire a painter or other trade on behalf of the client, you are exempt from the requirement of Bill 119 and do not have to register with the WSIB. However, if you do mixed residential and commercial work, and are hiring sub-trades on behalf of the client, you are no longer exempt and you will need to register with WSIB.



The included information is for general reference only.

WSIB Audits

For those interior designers that insist on hiring sub-trades on behalf of the client (non-residential projects), ARIDO recommends that you comply with the WSIB requirements and register. WSIB actively conducts audits of sub-trades. Should WSIB audit a sub-trade that you recently hired for a non-residential project, it will likely instigate an investigation by WSIB and will result in fines against your firm.

Clearance Certificates

A clearance certificate is a waiver by WSIB that the company that provides the clearance is in good standing with the WSIB. If there is an accident the principal asking for the clearance will not be held responsible by the WSIB for any accident costs should a worker employed by the sub be injured on the project. As well, a clearance ensures that the principal will not be held responsible by the WSIB for any of the sub's premiums owing on the labour portion of contract with the sub. Perhaps most importantly, the principal will not be at risk for non-compliance with Bill 119 which requires a clearance be in place before any construction work is started.

Sometimes a principal will be satisfied with the explanation supporting that interior design services are exempt from coverage. But more often the case is the principal or the company the principal has hired to do its pre-qualification checks doesn't fully understand or care, and wants clearances from everyone on the project as a matter of due diligence. In these situations, the only way to provide a clearance certificate is to register with the WSIB. If you do not wish to register with WSIB because you only offer interior design services, you may wish to reconsider whether or not the project should be taken on.

Regarding residential projects, homeowners are exempt from having to obtain a clearance certificate.

Fines

The Workplace Safety and Insurance Act, 1997 (WSIA) provides that a company that has been convicted of an offence under the WSIA may be fined up to \$500,000 by the presiding judge. The owner of an unincorporated company may be fined up to \$25,000. An example of such an offence is not obtaining a clearance certificate when required to by the WSIA.

Office of the Employer Adviser

The included information is general information. Your particular circumstances may not be directly covered in full by the above information, and you may want to have a more detailed discussion about your specific situation as it arises.

ARIDO recommends you DO NOT call WSIB directly but call the **Office of the Employer Adviser (OEA)** first to obtain an objective opinion. Calling WSIB directly may result in a sudden investigation by WSIB into your firm's activities. Your conversation with an OEA staff member will mean your conversation and consultation with them will remain confidential, and their consultation is at no cost to you.

If you or your client would like to confirm this or have a further discussion with a counsel on the WSIB requirement for Interior Designers, ARIDO recommends you call the following individual at the OEA directly:

► **Michael Zacks**
Director (A) and General Counsel
Office of the Employer Adviser
505 University Avenue, 20th Floor
Toronto ON M5G 2P1
Tel: (416) 314-8735 / Fax: (416) 350-7130
www.employeradviser.ca

**Employer
Classification**CU Code
7799-001Miscellaneous Business Services

Status

By application (non-covered)

Scope

Business activities include providing services which are not elsewhere classified such as

- appraising services (excluding insurance or real estate)
- bailiff services
- collecting statistics
- convention services
- demonstration services including incidental display (excluding sales)
- economic intelligence services
- editorial services
- fashion designing, apparel (design only)
- fundraising services
- interior designing services (design only)
- inventory taking services
- modelling services
- motor vehicle license bureaus (contracted)
- parking enforcement (contracted)
- patent agents
- pattern making (needle trade) services
- sampling services, statistical.

The following services are included, but not when carried on as part of a business service centre or a bulk mail sorting and processing service

- address (location) processing services
- collecting statistics
- compiling mailing lists
- directory compilation services
- inventory taking services
- labelling services.

Included here are employers who take contracts to provide interior design services. This includes providing advice and recommendations to clients on the implementation and/or modification of their designs. The services may include periodic on-site meetings and inspections. Excluded from these services is the taking of contracts to carry out a construction (Class G) business activity.

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Miscellaneous Business Services

Also included are clerical research activities that are not part of a medical, scientific, or technical research and development project.

Excluded is the pick-up, sorting, or delivery of mail in bulk.

Cross reference

E-577-02, *Postal Services*. E-577-03, *Courier Service Operations*. G-719-05, *Interior Designing Services*. H-845-05, *Other Services Incidental to Government*. H-875-24, *Health Care Research Agencies*. I-956-38, *Insurance and Real Estate Agencies*. I-958-14, *Business Service Centres*. I-958-18, *Custom Typing Services*. I-958-26, *Research and Development*. I-962-05, *Other Advertising Services*.