



WORKERS COMPENSATION AND INJURY MANAGEMENT FACTSHEET 11 INFORMATION FOR EMPLOYERS - CROSS BORDER

This factsheet provides a guide for employers that have workers who travel and work across State borders. Everyone that employs workers must have a workers compensation insurance policy.

In the past, employers at times have been required to obtain workers compensation coverage for an individual worker in more than one State (or Territory). From 1 January 2006, you are only required to maintain a workers compensation policy in New South Wales (NSW) when you have workers with a '**State of Connection**' in NSW.

The new cross border arrangements reduce red tape and make it easier to do business by eliminating the need for you to obtain multiple workers compensation policies for workers who are temporarily working in other States.

DETERMINING THE 'STATE OF CONNECTION'

You need to determine your worker's 'State of Connection' using the following tests and maintain a current workers compensation policy for that worker in their 'State of Connection'. Similarly, the benefits to which an injured worker is entitled to is also determined by the 'State of Connection'.

A worker's 'State of Connection' is:

- Test A – The State in which the worker **usually works** in that employment
- Test B – *If no State is identified by test A*, the State in which the worker is **usually based** for the purposes of that employment
- Test C – *If no State is identified by test A or B*, the State in which the **employer's principal place of business** in Australia is located.

If no State is identified by these tests, a worker's employment **may** still be connected with NSW if the worker was in NSW when the injury occurred and the worker is not entitled to compensation outside of Australia for the injury.

Except where workers are covered by the Commonwealth *Seafarers Rehabilitation and Compensation Act 1992*, the 'State of Connection' of workers on ships is determined in the same way as other workers. However, in the case of an employee working on a ship, if no State or no one State is identified by the tests, a worker's employment is, while working on the ship, connected with the State in which the ship is registered or (if the ship is registered in more than one State) the State in which the ship most recently became registered.

Cross border provisions **do not** necessarily mean that you will only require one policy of insurance in one State for all your workers. You may require coverage in more than one State as you may have some workers with a NSW State of connection and others connected with another jurisdiction. All States and Territories have now introduced cross border provisions that allow workers to work across their borders for temporary periods, under an existing workers compensation policy.

There may also be differences between States regarding who is a worker and under what circumstances benefits are payable. Contact your insurer/Scheme Agent and/or the workers compensation authorities in every jurisdiction where you engage individuals to work, to ensure that the insurance arrangements in place are appropriate. Contact details for the various States' workers compensation authorities are contained at the end of this factsheet.

STATE IN WHICH A WORKER 'USUALLY WORKS'

A worker '**usually works**' in the State where they spend the greatest proportion of their working time. Many workers are required to travel temporarily to other States in the course of their duties. However, if a worker spends the greatest proportion of their time working in one State, for the term of their contract, they are considered to usually work in that State. Also the worker's work history with the employer and the employer's and worker's intentions in relation to current and ongoing employment must be considered. Temporary arrangements shorter than six months are not to be taken into account in deciding the issue.

STATE IN WHICH THE WORKER IS 'USUALLY BASED'

There may be cases where, under an ongoing contract of employment, an employee works comparable periods of time across a number of States. In these cases the worker's 'State of Connection' is where they are 'usually based' in relation to the contract or term of employment.

When deciding where a worker is usually based, the following factors should be considered:

- the work location specified in a worker's contract of employment
- the location the worker will attend routinely during the term or contract of employment to collect or use materials, equipment or other items in relation to the work and receive directions or instructions
- the location the worker reports to in relation to the work.

EMPLOYER'S PRINCIPAL 'PLACE OF BUSINESS'

There may be cases where an employee works equally across a number of States, but is not usually based in any particular State. In these cases the worker's 'State of Connection' is where the **employer's 'principal place of business'** in Australia is located.

Evidence of the employer's 'principal place of business' will include:

- the address registered on the Australian Business Register in connection with the employer's Australian Business Number (ABN)
- if the employer is not registered for an ABN, the State registered on the Australian Securities and Investments Commission's National Names Index, as being the jurisdiction in which the employer's business or trade is carried out
- if the employer is not registered for an ABN or on the National Names Index, the employer's business mailing address.

WHAT WAGES DO I INCLUDE IN MY WAGES DECLARATION?

From 1 January 2006, you should declare wages for NSW workers compensation insurance premiums for workers with a NSW 'State of Connection.'

SUPPORTING DOCUMENTATION

To ensure that a worker's 'State of Connection' can be readily determined, contracts of employment or other forms of documentation should be clear and specific. Employers should clearly state where, and for how long, workers will be working in a particular State.

You should keep accurate records of any arrangements to send workers temporarily to other States, these records could include:

- contracts of employment and letters of offer and acceptance
- occupational licenses and accreditation
- timesheets and site agreements
- travel/lodging records
- industrial award information
- union membership

or other documentation that might confirm that the employment arrangement is at least six months duration.

If the worker's 'State of Connection' is a State other than NSW you will also need to provide evidence of insurance cover in that State if requested.

THE STATE OF CONNECTION OF SOME OF MY WORKERS HAS CHANGED, WHAT SHOULD I DO?

Any fluctuation over the period of coverage would be accounted for in the hindsight premium calculation undertaken at the end of the policy period. However, should there be significant change in the number of workers and associated wages, you should contact your Scheme Agent for further information.

A list of Scheme Agents can be found at www.workcover.nsw.gov.au

THERE WAS AN AGREEMENT WITH VICTORIA THAT ALLOWED MY WORKERS TO WORK ACROSS THE BORDER, HAS THIS CHANGED?

Yes, you will need to determine the 'State of Connection' of the worker(s) involved. When the 'State of Connection' is determined using the tests, then a policy in that State would be required. The former agreement no longer applies.

NOTIFICATION OF INJURIES

Notify WorkCover immediately on 13 10 50 for serious incidents involving a fatality or a serious injury or illness that takes place in NSW even if you have workers compensation insurance cover in another State or Territory. You must also notify your workers compensation insurer/Scheme Agent within 48 hours.

For other incidents involving an injury or illness to workers, notify your workers compensation insurer/Scheme Agent within 48 hours. They will advise WorkCover. In the event that the relevant insurer is not a NSW Scheme Agent, you must advise WorkCover.

For further information on notifying work-related incidents please refer to our website at www.workcover.nsw.gov.au

EXAMPLES

These examples help demonstrate how to determine your worker's 'State of Connection'. However, each factual circumstance will need to be independently assessed given the varying nature of employment relationships.

EXAMPLE 1: I'VE JUST WON A NEW CONTRACT IN ANOTHER STATE/TERRITORY

- A company operates from a principal place of business in NSW and has a workers compensation insurance policy in NSW
- The company wins a four-month contract in Queensland
- The company sends a number of its key permanent NSW personnel to oversee work on the four-month contract. They will return to NSW to work at the completion of the contract
- The company also recruits additional staff specifically to work in Queensland on this contract
- The company has made no commitment to employ these additional workers once the contract in Queensland is completed.

In this example, we must consider each group of workers separately as their contracts of employment are different.

Test A establishes the company's **existing permanent workers** usually work in NSW and are only working temporarily in the other State for the duration of the contract. Their 'State of Connection' continues to be NSW and these workers should continue to be included in the employer's NSW workers compensation policy. As this case has been decided by the application of test A, tests B and C do not require consideration.

By applying test A to the **additional staff** located in Queensland who have been employed solely to work on the contract in Queensland and have no other relevant employment connection with NSW, it establishes these temporary workers usually work in Queensland in that employment and as such Queensland is their 'State of Connection'. This group of temporary workers are only required to have workers compensation coverage in Queensland and the employer needs to take out a workers compensation policy in that State to cover them. As this case has been decided by the application of test A, the other tests do not require consideration.

EXAMPLE 2: MY DRIVERS REGULARLY TRAVEL ACROSS MANY STATES

- An interstate bus company has a head office in NSW
- The company has offices and depots in Queensland, NSW and Victoria
- Drivers spend equal amounts of time driving through the three States but are usually connected to one of these depots
- The drivers do not usually work in any one State.

Test A fails to identify a State in which the worker usually works in that employment; the drivers do not usually work in any one State.

By applying test B it can be established what State the worker is usually based in for the purposes of that employment. In this scenario, the worker is usually based in the depot from which they operate. For instance, if one driver normally operates from a depot in NSW, their employer would require a workers compensation policy in NSW for that worker.

EXAMPLE 3: MY CONTRACTS ARE SPLIT BETWEEN TWO STATES AND MY WORKERS REPORT TO THE DIFFERENT JOB SITES.

- A construction company with its office in NSW undertakes contract work in both NSW and Victoria
- On past contract experience, the work is evenly distributed between the States
- The workers work in both States from time to time depending on where the employer gains a contract
- The workers do not have a permanent base, rather they report directly to the site on which they are working at that time.

In this example, test A does not apply as the workers work in both NSW and Victoria and cannot be said to work usually in any one State.

Test B does not apply, as the workers are not based in any one State as they report directly to the site on which they are working at that time.

To identify the workers' 'State of Connection' we need to move to test C. By applying test C we identify the employer's principal place of business, which in this example is in NSW, therefore the workers' 'State of Connection' is NSW.

FOR FURTHER INFORMATION

- Your workers compensation insurer/Scheme Agent
www.workcover.nsw.gov.au
- NSW WorkCover Assistance Service: 13 10 50
- WorkCover Queensland www.workcover.qld.gov.au
- WorkCover Victoria www.workcover.vic.gov.au
- WorkCover ACT www.workcover.act.gov.au
- WorkCover South Australia www.workcover.com
- WorkCover Tasmania www.tas.gov.au
- WorkCover Western Australia www.wa.gov.au
- Worksafe Northern Territory www.nt.gov.au
- Comcare www.comcare.gov.au
- Seacare Authority www.seacare.gov.au
- Australian Defence Force www.defence.gov.au

Disclaimer

This publication contains information regarding occupational health, safety, injury management or workers compensation. It includes some of your obligations under the various workers compensation and occupational health and safety legislation that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate Acts.

This publication may refer to WorkCover NSW administered legislation that has been amended or repealed. When reading this publication you should always refer to the latest laws. Information on the latest laws can be checked at www.legislation.nsw.gov.au or contact (02) 9238 0950 or 1800 463 955 (NSW country only).



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