

Definition of a Worker

The *Workers Compensation and Injury Management Act 2023 (WCIMA23)* covers any worker under a contract of service or apprenticeship and certain contractors. Regulations include and exclude specific work arrangements.

Key Points

Act ref: ss. 12, 13, Reg ref: Part 2

- Any person working under a contract of service is covered as a worker in the workers compensation scheme.
- Any person working under a work contract and training contract as an apprentice is also covered as a worker.
- Contractors are covered in the following circumstances. Any individual who has contracted with another person for the performance of work is covered if –
 - (i) the work is not work in the course of or incidental to a trade or business regularly carried on by the individual in the individual's own name or under a business or firm name; and
 - (ii) the individual does not sublet the contract; and
 - (iii) if the individual employs a worker, the individual performs part of the work personally.
- Working directors and licensed jockeys are deemed workers.
- Regulations include and exclude specific work arrangements.
- NDIS support workers are deemed workers by the regulations if a participant in the NDIS receives funding for supports under their plan and that funding is self-managed by the participant or managed by a registered plan management provider to engage a person for support: In these circumstances:
 - a) the person engaged is a worker; and
 - b) the participant is the employer of the worker.

Questions & Answers

Q. Are contractors covered?

A. Yes, except where a contractor is doing work that is in the course of or incidental to a trade or business regularly carried out by the individual in the individual's own name or business or firm name.

Q. Are labour hire workers covered?

A. Yes, if engaged in labour hire employment as defined in the *WCIMA23*. An individual engaged in labour hire employment is a worker and the labour hirer is the worker's employer.

Q. Are platform or on-demand workers covered as workers?

A. Only if covered under a contract of service or contract for the performance of work. On-demand workers are not deemed workers in the regulations at this time. The legal status of on-demand workers is uncertain and WorkCover WA is monitoring developments. The evolving nature of these arrangements is why it is important the legislation provides for regulations to include other classes of worker if appropriate.

Q. Why aren't clergy or religious workers covered in regulations?

A. Regulations under the *WCIMA23* provide for coverage of religious workers if the person is not already working under a contract of service.