

# Loan-out Companies and Production Firms in the Motion Picture and Television Industry

This document and the included Frequently Asked Questions provide information about the impact of WorkSafeBC's recent status policy change on loan-out companies (LOC) and production firms in the motion picture and television industry (MPTI firm). They do not replace or serve as a substitute for [Assessment Policy: AP1-1-1](#).

## Summary

1. A loan out company that only provides its services to a production firm in the motion picture and television industry is not required to register with WorkSafeBC.
2. A loan out company's lent out principal is deemed to be the seconded or lent worker of the production firm in the motion picture and television industry.
3. The production firm in the motion picture and television industry must report and remit assessments for the loan out company's lent out principal.
4. Each of the loan out company, its lent out principal, and the production firm in the motion picture and television industry is entitled to the *Act's* compensation provisions' coverages (e.g., the bar-to-suit, compensation for workplace injury).

## What has changed?

On July 13, 2022, WorkSafeBC's Board of Directors amended workplace status policy to better align policy with the *Workers Compensation Act* and the common law, and to reflect the changing nature of work in British Columbia.

The new workplace status policy took effect on January 1, 2023. The changes that most impacted the motion picture and television industry are the removal of the Personal Service Corporation specific guideline and the new 'sufficient independence' test (whether a corporation has sufficient independence to warrant registration).

## What does this mean?

Under the new workplace status policy, all corporations must register with WorkSafeBC unless they do not have sufficient independence to warrant registration. For the motion picture and television industry, WorkSafeBC has accepted the industry's concept of LOC, which is a sole shareholder corporation that "loans out" its one and only shareholder to an MPTI firm in a short-term quasi-employment relationship.

Generally, **a LOC does not have to register with WorkSafeBC if it only loans out its principal to MPTI firms**. The LOC's lent out principal is presumed to be the MPTI firm's seconded or lent worker.

**If a LOC contracts with any entity that is not an MPTI firm, the LOC must contact WorkSafeBC to determine whether it is required to register.**

A LOC is an employer under the *Act* even if it does not have sufficient independence to warrant registration. It is only relieved of its duties to register, calculate and report its assessment, and remit the assessment by the due date.

Each of the LOC, its lent out principal, and the MPTI firm has the benefit of the [bar-to-suit](#).

## Frequently Asked Questions

### Information for LOCs

#### 1. Is a LOC an employer under the *Act*?

Yes. A LOC engaged in an industry in BC is an employer under the *Act*, but WorkSafeBC will not register the LOC if it does not have sufficient independence.

#### 2. When is a LOC not required to register?

A LOC does not have sufficient independence to warrant registration if all of the following criteria are met:

- The limited company is a sole shareholder company.
- The limited company was incorporated to be a LOC.
- The limited company is exclusively engaged to serve MPTI firms.
- The limited company is recognized as a LOC within the motion picture and television industry.
- The MPTI firm has fundamental control over the individual (the MPTI firm defines the terms of employment in respect of the work; and the nature, amount and management of the work).
- The limited company does not provide any major equipment under the material contract with the MPTI firm.

#### 3. When is a LOC required to register?

A LOC must register if any of the following apply:

- The limited company employs a worker other than the principal active shareholder.
- The limited company provides major equipment under the material contract.
- The limited company is engaged to serve a non-MPTI firm.

#### 4. If I am not required to register, do I have coverage?

Yes. Where a LOC does not have sufficient independence to warrant registration, the LOC's sole active shareholder has compensation coverage through the MPTI firm it is working for.

## 5. If I am not required to register, who pays for my coverage?

As a LOC's lent out shareholder is deemed to be employed by the MPTI firm, the MPTI firm is required to report and remit assessments for the lent out shareholder.

## 6. What if I am unsure if I need to register for coverage?

If you are not sure whether you need to register, please [submit a registration application](#) or contact our [Employer Service Centre](#).

## 7. What should I do if I already submitted an application after January 1, 2023?

WorkSafeBC's officers are working on processing all registration applications received since January 01, 2023. If an account was registered in error, it will be invalidated and you will be notified as such within the next few weeks.

## 8. Do I need to reapply if I received an exemption letter prior to January 1, 2023?

As long as there is no change in your operations, a LOC that previously received a decision letter from WorkSafeBC advising that it was adjudged to be a personal service corporation and therefore not able to register is not required to reapply. The previous finding that the LOC does not have insufficient independence is presumed to continue.

However, you must reapply if your operations or contractual relationships have since changed or you now employ a worker other than the principal active shareholder.

## Information for production companies

### 9. What is Extended Coverage?

A motion picture or television production firm that has signed onto one of the master or collective agreements between producers and unions in the motion picture and television industry may apply for extended coverage. If WorkSafeBC grants extended coverage, the firm is deemed to be the employer of certain individuals who would not otherwise satisfy the Act's definition of 'worker' (e.g., an independent operator without personal optional protection or the principal of a corporation that failed to register with WorkSafeBC as required).

Once extended coverage commences, both the firm granted extended coverage and each individual subject to extended coverage are covered while engaged in employment activities. The firm granted extended coverage is then required to report payroll and pay premiums for those individuals.

Please consult *Assessment Manual Policy Item AP1-4-4(c)* and *(d)* to determine the classes of individuals included in and excluded from extended coverage.

## 10. Who can apply for extended coverage?

Only a motion picture or television production firm that has signed onto at least one of the master or collective agreements between producers and unions at the time the extended coverage is requested is eligible to apply under *AP1-4-4*.

To apply, submit an [Application for Extended Coverage \(1800MPEX\)](#). Generally, the effective date for extended coverage is no earlier than 5 days prior to the date that WorkSafeBC receives the application. An incomplete or illegible application will not be accepted.

## 11. Is a LOC without sufficient independence only covered if Extended Coverage is in place?

No. A company that satisfies the description of LOC and the stated circumstances, and that company's lent out principal are entitled to the compensation provisions' coverages.

## 12. Do I need to report payroll for a LOC?

A MPTI firm is required to report and pay premiums on the total payments made to a LOC, regardless of the label attached to the payment, up to the maximum assessable amount. The [maximum wage rate](#) for 2023 is \$112,800 per worker.

If a LOC is registered with WorkSafeBC, a MPTI firm is not responsible for paying the LOC's premiums; and therefore, those premiums should not be included in the MPTI firm's assessable payroll. You can verify if a firm is registered by obtaining a clearance letter or signing up for clearance alerts through WorkSafeBC.com.

See [Why do I need a clearance letter?](#) for more information.

## What's next?

[Assessment Practice Directive PD1-1-1 Workplace Status](#) will be amended to include the "Loan-out company in the motion picture and television industry" specific case.

## Need more information?

If you have any questions about how the workplace status policy applies to you or coverage, please call our Employer Service Centre for more information at 604.244.6490 (or toll-free at 1.888.992.6622). We would be happy to help.