

 <p>Yukon Workers' Compensation Health and Safety Board</p>	Part:	Introduction	
	Board Approval:	<i>Original Signed by Chair</i>	Effective Date: July 1, 2008
	Number:	IN-03	Last Revised:
	Board Order:		Review Date:

**TRANSITION POLICY –
WORKERS' COMPENSATION ACT 2008**

GENERAL INFORMATION

The Board of Directors' policies provide direction to ensure consistency in interpreting the *Workers' Compensation Act* S.Y. 2008 (the "Act") and, where applicable, earlier *Workers' Compensation Acts*.

Attached, as Appendix A, is a section-by-section comparison of the *Workers' Compensation Act* R.S.Y. 2002 and the *Act*.

PURPOSE

This policy outlines how the *Act* and the Board of Directors' policies apply to claims made before the effective date of the legislation.

DEFINITIONS

1. **Entitlement:** means a decision-maker has accepted that a worker is eligible to receive compensation.
2. **Compensation:** means any amount payable or services provided under the *Act* in respect of an injured worker.

POLICY STATEMENT

1. Establishment of Policies Applicable to Prior *Workers' Compensation Acts*

Under the *Act*, the Board of Directors has the authority to establish policies, including policies under earlier *Workers' Compensation Acts*.

2. Application of Predecessor Legislation

Where a previous *Workers' Compensation Act* is repealed the normal rule of interpretation is to use the most current *Act*. The only exception is the transition part of a *Workers' Compensation Act*, which directs that entitlement of a worker to compensation is determined pursuant to the *Workers' Compensation Act* in force at the time of the worker's injury. Subsections 127 (a) to (g) of the *Act* confirm this, by specific legislative direction; that entitlement to compensation, which includes matters such as indexing of benefits or the amount of compensation, will be dealt with by using the specific *Workers' Compensation Acts* listed in section 127 of the *Act*.

Unless directed by section 127 of the *Act*, the normal rule of interpretation is, because the *Workers' Compensation Act* RSY 2002 is repealed, all compensation benefits will come under the *Workers' Compensation Act* S.Y. 2008.

Policies of the Board of Directors that were in force at the time of the worker's injury will apply, unless a subsequent policy states otherwise.

3. Directions on Interpreting the Act

- a) Section 131 repeals the *Workers' Compensation Act* R.S.Y. 2002.
- b) Effective July 1, 2008, section 14 "Mitigation of Loss" shall apply to all workers, regardless of their date of injury.
- c) Section 24 "Canada and Quebec Pension Plan Offset". Workers in receipt of earnings loss compensation on July 1, 2008 who received their Canada or Quebec Disability Pension Plan prior to July 1, 2008 will not have this amount deducted. This section will apply to all workers who became entitled to receive or came into receipt of CPP benefits on or after July 1, 2008, including workers injured under earlier *Workers' Compensation Acts*, who suffer an aggravation or recurrence of their injury after July 1, 2008.
- d) Effective July 1, 2008, sections 40(1) and (2) of the *Act*, a duty to cooperate in return to work; will apply to all employers and workers, regardless of date of injury.
- e) All review and appeals shall be brought under the procedures established under the 2008 *Act*, regardless of when the injury occurred, including earlier Yukon *Workers' Compensation Acts*.

4. Amendments to the Act

When any amendments are made to the *Act*, the Board of Directors will, as soon as practicable, make any changes to its policies that are required to ensure consistency with any amended provisions or section references to the *Act*.

Where any inconsistency exists between a provision of a policy of the Board of Directors and a provision of the *Act*, the provision of the *Act* will prevail to the extent of the inconsistency.

APPLICATION

This policy applies to all policies established by the Board of Directors and to the YWCHSB, its staff, the appeal committees of the Workers' Compensation Appeal Tribunal, and all workers and employers covered by the *Act*.

ACT REFERENCES

Subsection 127(1) of the *Act*, S.Y provides as follows:

If a worker is entitled to compensation as a result of a work-related injury caused:

- (a) in 1982 or earlier, the worker's entitlement to compensation shall be determined pursuant to predecessor legislation as it was in force before January 1, 1983;
- (b) subject to subsection 20(2) and paragraphs (c) to (e), in 1992 or earlier, the worker's entitlement to compensation shall, until January 1, 2002, be determined pursuant to predecessor legislation as it was in force before January 1, 1992;
- (c) after January 1, 2002, if a worker is in receipt of compensation, the worker's wage rate shall be the maximum wage rate determined pursuant to section 124 of this *Act*;
- (d) section 19 of this *Act* shall apply to the indexing of the worker's wage rate determined after January 1, 2002;
- (e) for the purpose of section 19 of this *Act*, the worker's anniversary date shall be considered to be January 1, 2002;

Transition Policy – *Workers' Compensation Act 2008*

- (f) in March 31, 2000 or earlier, the worker's entitlement to compensation shall be determined pursuant to predecessor legislation as it was in force before April 1, 2000;
- (g) for workers who suffered a work-related injury between July 31, 1973 and December 31, 1982
 - (i) the maximum wage rate is set at \$56,000, effective January 1, 2009,
 - (ii) the maximum wage rate increase will be set, effective January 1st of each subsequent year, by the Board of Directors adjusting this amount by the percentage change in the average index in the Consumer Price Index for Whitehorse, calculated using the percent change between the average index for the preceding twelve month period ending October 31st and the same time period one year earlier, so long as the percentage change is not more than four percent or less than zero percent.

HISTORY

- PL-03, "Transition Policy – Amendments to The *Workers' Compensation Act*", effective April 26, 2005, revoked July 1, 2008.
- GC-02, "Bill 83 Transition Policy"; effective January 1, 2001, revoked April 26, 2005.
- GC-09, "Transitional Clause"; effective March 7, 1995, revoked April 26, 2005.
- GC-12, "2002 Revised Statutes of the Yukon Transition Policy"; effective December 2, 2003, revoked April 26, 2005.

Appendix A

Old	Old Section Title	New	New Section Title
	Table of Contents		Table of Contents
1	Objects	1	Purposes
2	Application	2	Application
Part 1	Eligibility for Compensation	Part 1	Eligibility for Compensation
3	Eligibility for compensation	4	Eligibility for compensation
4	Optional coverage	5	Optional coverage
5	Designation of workers by government	6	Designation of workers by government
6	Presumption to be work-related	17	Presumption to be work-related
7	Work-related injury caused outside of the Yukon	7	Work-related injury caused outside of the Yukon
8	Suspension or reduction of compensation	14	Duty to mitigate
Part 2	The Claim Procedure	Part 2	The Claim Procedure
9	Worker's notice to employer	8	Worker's notice to employer
10	Worker's notice to board	9	Worker's application for compensation
11	Employer's notice to board	10	Employer's notice to board
12	Application for compensation	15	Adjudication of application for compensation
13	Workers' advocate	109	Workers' advocate
14	Medical reports	11	Medical reports
15	Autopsy	12	Autopsy
16	Required medical examination or evaluation	13	Required medical examination or other evaluation
17	Medical consultant	108	Medical consultant
18	Notice of decision and progress report	16	Notice of decision and progress report
19	Independent medical examination	60	Independent medical examination
20	Review by hearing officer	53	Review by hearing officer

Appendix A

21	Appeal of a claim	54	Appeal to appeal tribunal
22	Appeal tribunal	62	Appeal tribunal
23	Powers of the members of the appeal tribunal	63	Powers of the members of the appeal tribunal
24	Appeal Committee	64	Appeal Committee
25	Jurisdiction of the appeal tribunal	65	Jurisdiction of the appeal tribunal
26	Application to Supreme Court	59	Application to Supreme Court
27	Access to claim file	56	Access to claim file
28	Implementation	57	Implementation of decision
29	Public register	107	Public register
30	Prohibition	122	Prohibition
31	Interest	31	Interest
32	Decisions based on merit	18	Decisions based on merit
33	Benefit of doubt to worker	19	Balance of probabilities
Part 3	Compensation for Workers	Part 3	Compensation for Workers
34	Compensation for permanent impairment	20	Compensation for permanent impairment
35	Compensation for loss of personal property	21	Compensation for loss of personal property
36	Compensation for loss of earnings	22	Compensation for loss of earnings
37	Worker's weekly loss of earnings	23	Worker's weekly loss of earnings
38	Modified average weekly earnings	25	Modified average weekly earnings
38	Modified average weekly earnings	26	Recurrence of work-related injury
39	Payment to employer	28	Payment to employer
40	Minimum compensation for total disability	30	Minimum compensation for total disability
41	Annuity at age 65	32	Annuity
42	Medical Aid	36	Health care assistance

Appendix A

43	Alternatives and traditional healing methods	37	Alternatives and traditional healing methods
44	Rehabilitation assistance	39	Rehabilitation assistance
45	Emergency transportation	38	Emergency transportation
46	Diversion of compensation	33	Diversion of compensation
47	Compensation payable to a worker under 19	29	Compensation payable to a worker under 19
48	Indexing of benefits	35	Indexing of benefits
Part 4	Compensation for Dependants	Part 4	Compensation for Dependants
49	Death and funeral expenses	43	Death and funeral expenses
50	Compensation for spouse	44	Compensation for spouse
51	Benefits for dependent children	45	Benefits for dependent children
52	Equivalent to spouse compensation	46	Equivalent to spousal compensation
53	Other dependents	47	Other dependents
54	Limit on compensation	49	Limit on compensation
Part 5	Right of Action and Assignment	Part 5	Right of Action and Assignment
55	Limitation on legal rights	50	Limitation on legal rights
56	Assignment of a worker's cause of action	51	Assignment of a worker's cause of action
Part 6	Compensation Fund	Part 6	Compensation Fund
57	Formation of the compensation fund	91	Formation of the compensation fund
58	Use of the fund	92	Use of the fund
59	Advance of compensation out of Y.C.R.F.	93	Advance of compensation out of Y.C.R.F.
60	<i>Financial Administration Act</i>	94	<i>Financial Administration Act</i>
61	Investments	95	Investments
62	Actuarial report	96	Actuarial report
63	Audit	97	Audit

Appendix A

Part 7	Assessments	Part 7	Assessments
64	Assessments	66	Assessments
65	Assessment payable	67	Assessment payable
66	Liability for assessment	68	Liability for assessment
67	Assessment rates	69	Assessment rates
68	Employer classification	70	Employer classification
69	Employer's experience accounts	71	Employer's experience accounts
70	Super-assessment	72	Super-assessment
71	Merit rating programs	73	Experience and merit rating programs
72	Liability for assessment of contractors and sub-contractors	74	Liability for assessment of contractors and sub-contractors
73	Security for payment of assessment	75	Security for payment of assessment
74	Penalty for non-payment of assessment or provision of security	76	Penalty for non-payment of assessment or provision of security
75	Order to cease work	77	Order to cease work
76	Statement and estimate of earnings	78	Statement and estimate of earnings
77	Provisional assessment	79	Provisional assessment
78	Employer commencing or recommencing an industry	80	Employer commencing or recommencing an industry
79	Employer ceasing its business	82	Employer ceasing its business
80	Records of wages and operations	83	Records of earnings and operations
81	Examination	84	Examination
82	Employer's right of appeal	85	Employer's right of appeal of an assessment
Part 8	Enforcement and Priorities	Part 8	Enforcement and Priorities
83	Power to enforce payment	86	Power to enforce payment
84	Deemed trust for assessments		
85	Priorities	87	Priorities

Appendix A

86	Enforcement of assessments	88	Enforcement of assessments
87	Additional penalty for defaults by employer	89	Additional penalty for defaults by employer
88	Charge on the assets of employer	90	Charge on the assets of employer
Part 9	Offences and Penalties	Part 9	Offences and Penalties
89	General offences	110	General offences
90	Engagement in work not under the <i>Act</i>	81	Engagement in work not under the <i>Act</i>
91	Providing false information	111	Providing false information
92	Injunction	114	Injunction
Part 10	Miscellaneous	Part 10	Miscellaneous
93	Confidentiality	117	Confidentiality
94	Non-compellability	118	Non-compellability
95	Records and notices	119	Records and notices
96	Illiteracy	120	Illiteracy
97	Contribution, waiver, or assignment by worker	113	Contribution, waiver, or assignment by worker
98	Coercion not to file a claim	112	Coercion not to file a claim
99	Garnishment	121	Garnishment
100	Prohibition against assignment, set off, and attachment	34	Prohibition against assignment, set-off and attachment
101	Interjurisdictional agreements	124	Interjurisdictional agreements
102	Regulations and board orders	101	Orders of the board of directors
102	Regulations and board orders	128	Regulations
103	Recovery of overpaid compensation	123	Recovery of overpaid compensation
104	Transitional	127	Transitional
105	Government of the Yukon	126	Yukon Government
Part 11	Workers' Compensation Health and Safety Board	Part 11	Workers' Compensation Health and Safety Board

Chair

Appendix A

106	The board	98 & 115	The board of directors
107	Duties of the board	99	Duties of the board of directors
108	Powers of the members of the board	100	Powers of the members of the board of directors
109	Appearance	102	Appearance at Legislative Assembly
110	Release of annual reports	103	Release of annual reports
111	Annual meeting	104	Annual meeting
112	Jurisdiction of the board	105	Jurisdiction of the board of directors or the board
112(6), (7) & (8)	Jurisdiction of the board	61	Protection of decision-makers, previous decisions and witnesses
113	Appeal panel	106	Appeal panel of the board of directors
114	Written reasons	58	Written reasons
115	Ministerial investigation	125	Ministerial investigation
116	The president and staff	116	The president and staff
Part 12	Interpretation	Part 12	Interpretation
117	Definitions	3	Definitions
118	Special Examination		
119	Review	129	Review
			NEW
		24	Canada and Quebec pension plan benefits
		15	Adjudication of application for compensation
		27	Payment of earnings on day of work-related injury
		40	Return to work
		41	Employer's obligation to re-employ
		42	Provision of information
		48	Other benefits for spouse and dependents

Appendix A

		52	Limitation period for appeals
		55	Standing of board
		115	Powers of the board
		130	Coming into force
		131	Repeal