



YUKON WORKERS'
COMPENSATION
HEALTH AND
SAFETY BOARD

SUBJECT: GENERAL AND CORPORATE POLICY NO.: GC-15

BOARD APPROVAL:

APPROVAL DATE: December 17, 2007

BOARD ORDER NO.

EFFECTIVE DATE: January 1, 2008

POLICY STATEMENT

POLICY: NEGLIGENCE COST TRANSFER

SECTION REFERENCE

Section 69(2) of the *Workers' Compensation Act* R.S.Y. 2002 ('the Act') allows for the transfer of the costs of an injury from the cost history of one employer to that of another employer where it appears to the satisfaction of the Yukon Workers' Compensation Health and Safety Board (YWCHSB) that a worker of an employer was injured or killed owing to the negligence of another employer and/or his or her worker(s).

ROLES AND RESPONSIBILITIES

Employers have a duty under the *Occupational Health and Safety (OH&S) Act*, section 3-11 to:

- take appropriate measures to ensure that the workplace, machinery, equipment, and processes under the employer's control are safe and without risk to health; and
- ensure that workers are aware of workplace hazards and that appropriate measures are taken to prevent or reduce the risk of occupational illness or injury.

Workers have a duty to participate in activities to ensure their own health and safety and that of any other person in the workplace.

OBJECTIVE

This policy is intended to provide direction in determining when an employer (and/or his/her worker(s)) has been negligent and has thereby caused an injury or death to a worker(s) of another employer. Where negligence has been determined, this policy provides direction on how costs are transferred.

DEFINITIONS

- (a) Causation: means that it can be established that the alleged negligent employer and/or his or her worker caused, partly or wholly, and injury to the worker of another employer.
- (b) Duty of Care: means that the alleged negligent employer and/or his or her worker had a responsibility to the injured person to avoid causing them harm.
- (c) Negligence: is defined, for the purpose of this policy, through the establishment of a duty of care, standard of care and a breach of either that has caused injury or death.
- (d) Standard of Care: there is a duty in pursuing an activity to take reasonable care to avoid harm to others. The level of the standard of care varies with the activity.

GENERAL

Prior to each investigation involving negligence allegations, the YWCHSB will review the situation for evidence of negligence and materiality. For those cases where negligence is to be determined, the Investigations Unit will be consulted to determine whether an investigation into the incident is warranted. All parties likely to be affected by the determination will be given an opportunity to review the available evidence and make representations to the YWCHSB about the application of section 69(2).

Where more than one employer (including the disabled worker's employer) is found to be negligent in a particular case, the past and future injury costs of the claim will be apportioned among the negligent employers' cost histories based on degree of negligence. Where the YWCHSB is satisfied that the injury or death of a worker is due to the negligence of more than one employer, and degrees of negligence cannot

be determined, the costs of the injury will be charged equally to the cost history of the employers involved.

POLICY STATEMENT

Negligence will be determined by the YWCHSB upon the request of the disabled/deceased worker's employer or where deemed appropriate by the YWCHSB. Although the Yukon Workers' Compensation Health and Safety Board will attempt to identify cases where there is the potential of applying Section 69 (2) of the Act, the primary responsibility rests with the disabled/deceased worker's employer to request a determination. Requests from the worker's employer must be received within twenty four months of the date the disability arose.

EXCEPTIONAL CIRCUMSTANCES

When the individual circumstances of a case are such that the provisions of this policy cannot be applied, or to do so would lead to unfair or unintended results, the YWCHSB will decide the case based on its individual merits and justice. Such a decision will be case specific and will not set a precedent.

REVIEW AND APPEAL RIGHTS

Reconsideration of a decision regarding a person's status may be made by submitting a request for review to the Director of Assessments. Final decisions made by administration, regarding a negligence cost transfer, may be appealed to the YWCHSB, Board of Directors, under section 82 of the Act.

REFERENCES

Policy CL – 50, "Claims Cost Relief and Claims Cost Transfer"

Chair