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Optional Coverage For Sole Proprietors, Partners Or Employers

GENERAL INFORMATION

The *Workers' Compensation Act* S.Y. 2008 (the "*Act*") can be extended to provide the protection and benefits of the workers' compensation system to a sole proprietor, partner or employer. This is done upon the Yukon Workers' Compensation Health and Safety Board (YWCHSB) acceptance of a sole proprietor, partner or employer's application for optional coverage.

Once granted, optional coverage provides the individual holding the policy immunity from civil suits resulting from workplace injuries and provides the comprehensive benefits provided by the workers' compensation system as established by the *Act* and relevant policies.

PURPOSE

This policy establishes the conditions of extending optional coverage to a sole proprietor, partner or an employer under the *Act* who is not defined to also be a worker under the *Act* (e.g. directors of incorporated companies).

DEFINITIONS

1. **Actual Proven Earnings:** earnings that have been substantiated through the provision of evidence that is acceptable to the YWCHSB.
2. **Average Weekly Earnings:** earnings that shall be calculated based on any sources of earnings over any period of time that the YWCHSB considers fair and just, up to the maximum wage rate established for the year.
3. **Deemed Earnings:** the amount of gross earnings the YWCHSB has determined to be a sole proprietor's, partner's or employer's earnings as per the definition of earnings in the *Act* and the provisions of determining earnings in this policy. Calculation of loss of earnings benefits will be made based on this amount.
4. **Employer:** every person, partner, firm, association, organization or corporation that has one or more workers in their employ and includes:
 - a) a sole proprietor deemed by the YWCHSB to be an employer (e.g. one who purchases optional coverage);
 - b) any person deemed by the *Act* to be an employer; and
 - c) an un-incorporated employer.

- 5. Maximum Wage Rate:** the maximum wage rate set the year in which the optional coverage is purchased.
- 6. Optional Coverage:** coverage that is available to individuals who are not automatically covered by the *Act*. The YWCHSB deems, upon approval of an application for optional coverage, an 'employer' and a 'worker' for the purposes of extending the protection and benefits of the *Act* to these persons.
- 7. Partner:** a partner in a partnership.
- 8. Sole Proprietor:** an unincorporated, self-employed person who carries on or engages in any industry.
- 9. Worker:** a sole proprietor, partner or employer deemed by the YWCHSB to be a worker as per section 3 of the *Act*.

POLICY STATEMENT

1. Application Requirements

Applications for optional coverage must be made in writing and signed on the prescribed application form and in accordance with the conditions in place at the time.

A copy of the optional coverage purchased and its terms and conditions will be provided to the employer and worker(s).

2. Minimum Assessment and Coverage Amount

A sole proprietor, partner or employer may purchase optional coverage up to the maximum wage rate for the year. The minimum assessment fee that applies to all purchases of optional coverage is set by Order of the Board of Directors.

Optional coverage should closely reflect the earnings of the individual, as loss of earnings benefits will be calculated on the lesser of actual proven earnings or the policy coverage amount elected.

When the individual has operated for less than one year and has no history of earnings, the assessment and coverage may be based on the experience of a similar business or occupation.

3. Compensation Benefits

Once deemed a worker, a sole proprietor, partner or employer is eligible to receive benefits available under the *Act*. These include health care assistance, rehabilitation, loss of earnings benefits, death benefits and immunity from civil suit for injuries arising out of the workplace.

In the event of a time loss claim, loss of earnings benefits will be paid at a rate of 75 per cent (75%) of the amount determined to be the gross compensable deemed earnings under this policy up to 75 per cent (75%) of the maximum wage rate.

4. Determination of Earnings

A sole proprietor's, partner's or employer's average weekly earnings will be calculated using whichever amount is lesser of 1) actual proven earnings, or 2) the amount of optional coverage in place at the time of injury, as verified by the YWCHSB's assessment records. This amount will be deemed to be the earnings for the individual, with the exception of concurrent employer situations, dealt with in further detail in this policy.

The provisions of YWCHSB policy, "Minimum Compensation" apply to individuals covered by this policy.

If a claimant's actual proven earnings are zero or less than zero (e.g. a net loss for the year), the YWCHSB does not pay loss of earnings benefits. However, the YWCHSB will provide health care assistance and other benefits under the *Act*.

If a sole proprietor, partner or employer with optional coverage also has concurrent assessed earnings from another employer, those earnings will be included in determining a deemed earnings amount, provided the earnings are being lost as a result of the injury.

Concurrent assessed earnings will be adjudicated applying YWCHSB policy, "Loss of Earnings Benefits". Such earnings will be considered, even if inclusion results in exceeding the purchased optional coverage amount. However, earnings loss will only be paid on earnings up to the maximum wage rate for the year.

When the individual has operated for less than one year, has no history of earnings, and incurs a work-related injury, loss of earnings will be deemed based on the earnings of an employer in a similar business or occupation or the amount of coverage purchased, whichever is less.

5. Proof of Actual Earnings

Proof of actual earnings must be provided upon request and in a form acceptable to the YWCHSB. Generally, this will be the previous year's financial statement prepared by a certified accountant or the income tax return forms submitted to Canada Revenue Agency.

At the discretion of the YWCHSB, circumstances may require examination of other forms of evidence. This could include, but is not limited to, current year contracts or the YWCHSB's audit of a sole proprietor's, partner's or employer's earnings.

The YWCHSB will determine gross compensable earnings from:

a) net business income for the previous year as reported to Canada Revenue Agency, subject to audit by the YWCHSB. The YWCHSB then adjusts the net business income by including such items as:

- i) pension plan and RRSP contributions (if purchased by the business);
- ii) depreciation and amortization;
- iii) charitable donations;

- iv) expenses arising out of the individual's use of personal home or vehicle for business purposes;
 - v) draws from the business;
 - vi) other items as appropriate;
- b) an audited financial statement of earnings prepared by a certified accountant; or
- c) other means as determined by the YWCHSB, given the individual circumstances of the coverage holder.

6. General Conditions for Optional Coverage

a) Conditions of Coverage

Maintaining valid coverage is subject to the following conditions:

- i) submission of an appropriate form (e.g. application or renewal form) that is legible, signed and dated;
- ii) compliance with the conditions established by the YWCHSB for optional coverage;
- iii) provision of all the information required to administer this policy;
- iv) good standing of the account;
- v) the YWCHSB determination of gross compensable earnings;
- vi) the status of the person remaining the same as extended under this policy;
- vii) prompt advisement to the YWCHSB of any changes that may affect coverage; and
- viii) compliance with the *Act*.

If an application for optional coverage is not accepted, the applicant will be advised and provided with the reasons that coverage cannot be extended.

The YWCHSB reserves the right to cancel coverage where the risk to the Compensation Fund is considered too great, such as when information has been falsified.

b) Coverage Period

The coverage period, its expiration date and policy renewal requirements, will form part of the conditions of the policy sold to the employer. The coverage cannot exceed a period of 12 months.

7. Payment of Assessment Premiums

The YWCHSB may require the individual to pay in advance all or part of the optional coverage assessment premiums payable under section 67 of the *Act*.

Prepayment will be required in cases including, but not limited to:

- a. newly registered employers who have been in operation in Yukon for less than one season;

- b. employers that request a letter of clearance upon registration; or
- c. employers whose coverage has been cancelled and have requested re-instatement. The employer may be required to pay a portion or full assessment premiums up front.

For individuals who have had an account established with the YWCHSB for a period longer than one season, a periodic payment schedule may be worked out.

8. Cancellation of Optional Coverage

Cancellation of optional coverage shall occur when an individual ceases operations, a person ceases to be a 'worker,' or the optional coverage period expires, whichever is earlier.

To cancel optional coverage before the end of the coverage period, the individual must advise the YWCHSB in writing. All cancellations are subject to the minimum assessment fee and are effective the date cancellation is requested or is received by the YWCHSB, whichever is later.

When optional coverage is cancelled, the cancellation will be confirmed to the individual in writing.

When a person covered by optional coverage is receiving compensation, the YWCHSB does not automatically cancel the optional coverage. It is the individual's responsibility to notify the YWCHSB if cancellation of coverage is desired.

Cancellations cannot be pre-dated nor will there be a refund issued when a worker is in receipt of compensation. All cancellations are subject to the minimum assessment premium rate established by Order of the Board of Directors.

9. Revocation of Coverage

Optional coverage for a person deemed a worker may be revoked by the YWCHSB. Circumstances of revocation may include, but are not limited to when:

- a) the individual fails to pay the assessment premiums;
- b) the individual fails to provide information required by the YWCHSB; or
- c) an individual's account is not in good standing.

When optional coverage is revoked by the YWCHSB, the individual covered will be notified when practicable. The YWCHSB will take reasonable steps to locate the employer in order to communicate the revocation. The worker will be notified in every instance.

There will be no refund issued when a person is in receipt of compensation. All cancellations are subject to the minimum assessment premium rate established by Order of the Board of Directors.

10. Change in Status

It is the responsibility of the coverage holder to notify the YWCHSB of any change in status. This includes such circumstances as the optional coverage holder becoming the worker of another employer or changing status to that of an employer.

Where a sole proprietor or partner periodically hires workers and becomes an employer, worker's compensation coverage will be continued to the employer through subsection 3(1) of the *Act*. This provision grants the YWCHSB the authority to deem an individual an employer and a worker. The coverage will be transferred and continue for the duration under the same conditions.

When employing individuals who are automatically defined as workers under the *Act* (not those individuals eligible for optional coverage), coverage is compulsory under the *Act*. The employer must notify the YWCHSB with a statement and estimate of earnings within 10 days of hiring a worker under subsection 78(1) and section 80 of the *Act*.

11. Right of Action

Individuals with optional coverage lose certain rights of action. Those considering optional coverage may wish to consult a lawyer to evaluate whether optional coverage will benefit them.

APPLICATION

This policy applies to the YWCHSB, sole proprietors, partners or employers, as defined under the *Act*, who make application to be deemed their own employer and worker under subsection 5(2) and 3 of the *Act*.

APPEALS

Decisions made by the YWCHSB under this policy can be appealed directly in writing to the Board of Directors of the YWCHSB in accordance with subsection 85(1) of the *Act*.

ACT REFERENCES

Sections 3, 5, 22, 67, 76, 78, 80 and 85

POLICY REFERENCES

EL-01, "Loss of Earnings Benefits"

EL-02, "Minimum Compensation"

HISTORY

AS-18-02, "Optional Coverage for Sole Proprietors, Partners, or Employers", effective January 1, 2002, revoked July 1, 2008.

AS-18, "Optional Coverage", effective January 2, 1993, revoked January 1, 2007.

AS-18, "Optional Coverage", effective October 1st, 1995, revoked December 31, 2006.
