

Part:	Employer Assessments		
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## Optional Coverage For Casual Employees (Those Working Outside The Employer's Normal Industry), Persons Acting In A Religious Function, And Volunteers

### General Information

The *Workers' Compensation Act* S.Y. 2008 (the "*Act*") may be extended to provide the protection and benefits of the workers' compensation system for certain persons who are not automatically workers under the *Act*. This is done upon the Yukon Workers' Compensation Health and Safety Board's (YWCHSB) acceptance of an employer's application for optional coverage.

Once granted, optional coverage is then extended:

1. to the employer and to the worker for immunity from civil suits resulting from workplace injuries; and
2. to the worker for the comprehensive benefits provided by the workers' compensation system as established by the *Act* and relevant policies.

### PURPOSE

This policy establishes the conditions of optional coverage that will be in effect for employers and the persons deemed as their workers under this policy.

### Definitions

- 1. Actual Proven Earnings:** Actual proven earnings are earnings that have been substantiated through the provision of evidence that is acceptable to the YWCHSB.
- 2. Average Weekly Earnings:** Average weekly earnings are 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. Casual Employee Other than for the Purposes of the Employer's Industry:** A person employed on a casual basis, for *purposes other than the employer's industry*.

The YWCHSB policy, "Determination of Status" defines "casual basis" as employment that is irregular, unpredictable, sporadic and brief in nature.

It is critical to note that casual workers employed *for the purposes of the employer's industry* are automatically considered workers under the *Act*. Employers must pay assessment premiums on their earnings. Optional coverage is not required and this policy does not apply.

**4. Deemed Earnings:** Deemed earnings are the amount of earnings that the YWCHSB has determined to be a worker's earnings, in lieu of actual earnings. Calculation of loss of earnings benefits will apply the deemed earnings amount as annual earnings.

**5. Employer:** An employer, as defined under subsection 3(1)(h) of the *Act*, which includes a person or entity making application under this policy to have a person deemed to be their worker.

**6. Maximum Wage Rate:** The maximum wage rate set for the year in which the optional coverage is purchased.

**7. Optional Coverage:** Optional coverage 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.

**8. Volunteer:** A volunteer is a person who does volunteer work for which the person receives no earnings or only nominal earnings.

**9. Persons Acting in a Religious Function:** A person acting in a religious function is a duly ordained or appointed cleric, a member of a religious order or a lay reader.

**10. Worker:** Worker includes a person deemed by the YWCHSB to be a worker. For the purposes of this policy, this includes persons under subsection 5(1) of the *Act*:

- a) a person employed on a casual basis, otherwise than for the purposes of the employer's industry;
- b) a person during any time the person is acting in a religious function as a duly ordained or appointed cleric, a member of a religious order, or as a lay reader; or
- c) a volunteer.

## **Policy Statement**

### **1. Application Requirements**

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

The employer must have written consent of the individual being covered and this consent must be provided to the YWCHSB at the time of application.

The applicant will be informed of the conditions of his or her coverage at the time of purchase. A copy of the policy will be provided to the employer and worker(s).

### **2. Classifications of Deemed Workers**

Under this policy, there are two group classifications of deemed workers. Conditions of the sale of optional coverage and adjudication of claims will be established for each classification.

#### Type A Worker Classification

This applies to a person who is defined under the *Act* as a person employed on a casual basis, other than for the purposes of the employer's industry; or a person during any time the person is acting in a religious function as a duly ordained or appointed cleric, a member of a religious order or as a lay reader.

#### Type B Worker Classification

This applies to persons who are defined under the *Act* as volunteers.

Policy Provisions for Type A Worker Classification:

#### **Minimum Assessment and Coverage Amount**

An employer may purchase optional coverage for a worker up to the maximum wage rate for the year. The minimum assessment fee applies to all purchases of optional coverage.

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

#### **Loss of Earnings Benefits**

In the case of a work-related injury resulting in a time loss claim, the YWCHSB must confirm:

- a. that optional coverage was purchased;
- b. the level of coverage; and
- c. that the work-related injury occurred during the period that optional coverage was in effect.

The Type A worker is entitled to compensation in an amount equal to 75 per cent (75%) of his or her gross loss of earnings from all employment covered by the *Act*, up to the maximum wage rate for the year, or the optional coverage amount elected, whichever is less.

The YWCHSB policy "Loss of Earnings Benefits" shall apply in the calculation of loss of earnings benefits for regular employment earnings, and minimum compensation, if applicable. The coverage amount elected will not preclude the inclusion of other earnings from other employment source(s) that are being assessed workers' compensation premiums.

Where a portion of the earnings includes that received from a sole-proprietorship or partnership, the determination of earnings as defined in the YWCHSB policy,

"Optional Coverage for Sole Proprietors, Partners and Unincorporated Employers" will be applied.

Assessment premiums for coverage elected which is greater than the actual earnings proven at the time of a work-related injury is not refundable.

Policy Provisions Type B Person Classification:

### **Minimum Assessment and Coverage Amount**

The minimum amount of coverage that may be purchased for persons under this classification is one-half (1/2) the maximum wage rate established for the year of coverage.

### **Loss of Earnings Benefits**

In the case of a work-related injury resulting in a time loss claim, the YWCHSB shall confirm:

- a. that optional coverage was purchased and is in effect;
- b. the level of coverage; and
- c. that the work-related injury occurred during the period that optional coverage was in effect.

Workers' earnings under this policy classification will be deemed to be either one-half (1/2) the maximum wage rate, or actual proven earnings, whichever is greater.

Loss of earnings benefits will be paid based on 75 per cent (75%) of the gross deemed earnings. In cases where the actual proven earnings is greater than one-half (1/2) the maximum wage rate, the determination and calculation of loss of earnings benefits will be in accordance with the YWCHSB policy, "Loss of Earnings Benefits".

### **3. General Conditions For Optional Overage**

Conditions of Coverage

Maintaining valid coverage is subject to the following conditions:

- a. submission of an appropriate form (e.g. application or renewal form) that is legible, signed and dated;
- b. compliance with the conditions established by the YWCHSB for optional coverage;
- c. provision of all the information required to administer this policy;
- d. good standing of the account;

- e. prompt advisement to the YWCHSB of any changes that may affect coverage; and
- f. compliance with the *Act*.

If an application for optional coverage is not accepted, the employer will be advised and provided with the reasons as to why coverage cannot be extended.

It is the responsibility of the employer to ensure that the person(s) covered by optional coverage is aware of the conditions of coverage along with any changes to the coverage extended to him or her.

### **Coverage Period**

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

### **4. Payment of Assessment Premiums**

The YWCHSB may require the employer 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 the 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 who have requested reinstatement. The employer may be required to pay a portion or full assessment premiums up front.

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

### **5. Cancellation of Optional Coverage**

Cancellation of optional coverage shall occur when an employer 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 employer 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 employer and worker in writing.

When a person covered by optional coverage is receiving compensation, the YWCHSB does not automatically cancel the optional coverage. It is the employer'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.

## **6. 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. an employer fails to pay the assessment premiums;
- b. an employer fails to provide information required by the YWCHSB; or
- c. an employer's account is not in good standing.

When optional coverage is revoked by the YWCHSB, the employer 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.

## **7. Change in Status**

After the approval of an application for optional coverage, a deemed 'worker' may have a change in status. If an individual is no longer eligible for optional coverage because they are no longer a 'worker' of the employer who made the application, optional coverage is cancelled from the date of the status change.

It is the responsibility of the employer to notify the YWCHSB of any change in status. Assessment refunds will be subject to the minimum assessment fee and based on the date of notification received by the YWCHSB.

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*.

## **8. 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; an employer that applies for optional coverage, a volunteer, a casual employee, or a person acting in a religious function who is deemed a 'worker' under subsection 5(1) of the *Act*. This policy does not apply to volunteers designated as workers under section 6 of the *Act*.

### **EXCEPTIONAL CIRCUMSTANCES**

In situations where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or an unintended result, the YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB policy, "Merits and Justice of the Case." Such a decision will be considered for that specific case only and will not be precedent setting.

### **APPEALS**

Decisions made by the YWCHSB under this policy affecting workers' claims for compensation can be appealed directly in writing to the hearing officer of the YWCHSB in accordance with subsection 53(1) of the *Act*. Notice of the appeal must be filed within 24 months of the date of the decision by the YWCHSB, in accordance with section 52 of the *Act*. Decisions made by the YWCHSB under this policy affecting employers' assessments 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, 6, 52, 53, 67, 78, 80 and 85

### **POLICY References**

EA-04, "Optional Coverage for Sole Proprietors, Partners or Employers"

EL-01, "Loss of Earnings Benefits"

EN-01, "Arising Out Of and In The Course of Employment"

EA-02, "Determination of Status"

### **History**

Policy Statement "Optional Coverage," effective October 1st, 1995, revoked July 1, 2008.

Policy Statement "Optional Coverage," effective August 29, 1995.

Policy Statement "Optional Coverage," effective January 2, 1993.

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