Yukon Workers' Compensation Health and Safety Board	Part:			Entitlement
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ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

GENERAL

Entitlement for compensation will be awarded when an injury arises out of and in the course of employment. This means that an injury results from the nature, condition(s) or obligation(s) of the employment and that the injury happens at a time, place and circumstance consistent with the employment.

PURPOSE

This policy focuses on the established principles that have evolved to define "arising out of and in the course of employment" within the compensation system.

DEFINITIONS

1. Arising Out of Employment: means that there is a causal connection between the conditions of the work required to be performed and the resulting injury.

2. In the Course of Employment: means that an injury is linked to a worker's employment in terms of time, place and activity consistent with the obligations and expectations of that employment.

3. Injury: means

a) injury as a result of an event, or series of events, occasioned by a physical or natural cause;
b) an injury as a result of a wilful and intentional act, not being the act of the worker;

c) a disablement, but does not include the disablement of mental stress, other than post-traumatic stress (see policy, "Adjudicating Psychological Disorders");

d) an occupational disease, which includes a disease from causes and conditions peculiar to or characteristic of a particular trade or occupation or peculiar to the particular employment; but does not include an ordinary disease of life (e.g. influenza, colds, normal degenerative changes) ; or

e) death as a result of an injury.

4. Intoxication: means that a worker is under the influence of alcohol, drugs, and/or the improper use of medications.

5. Removing Oneself from the Course of Employment: happens when there is a distinct departure by the worker from the obligations and/or expectations of their employment duties for personal reasons or when there is an act of serious and wilful misconduct.

6. Serious and Wilful Misconduct: means a deliberate and intentional act of the worker that demonstrates a disregard for safety or consequences that the worker should reasonably have recognized as likely to result in personal injury and, hence, is considered to have been undertaken for the purpose of receiving compensation.

PREVENTION

There may be instances when a workplace hazard/incident has exposed a worker to a high risk of infection (e.g. HIV, hepatitis, meningitis, tuberculosis, etc). While the worker does not currently have a work-related injury, preventative measures (post-exposure prophylaxis) may be considered compensable by the Yukon Workers' Compensation Health and Safety Board (YWCHSB).

POLICY STATEMENT

A claim for compensation must meet the following criteria before it can be accepted:

1. the injured worker must be a "worker" as defined in the *Workers' Compensation Act* S.Y. 2008 (the "*Act")*;

2. the worker's employment must be in an industry that is within the scope of the *Act*;

3. the worker must have suffered an injury; and

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4. the injury must be work-related, meaning that it must have arisen out of and in the course of the worker's employment.

1. Arising Out of Employment

An injury arises out of employment if there is a causal connection between the conditions under which the work is required to be performed and the resulting injury.

The link between the causative employment hazard and the injury should be direct, objectively verifiable, and be dependent on the employer-employee relationship. An injury does not arise out of employment if it is caused by a hazard to which the employee would have been equally exposed apart from the employment.

In making this determination the YWCHSB will consider, on a case by case basis, criteria including, but not limited to:

a) whether the injury occurred when the worker was in the process of doing something for the benefit of the employer;
b) whether the injury occurred while the worker was doing something at the instruction of the employer;

c) whether the injury occurred while the worker was using equipment or materials supplied by the employer;

d) whether the injury was caused by some activity of the employer or another worker; and

e) whether the activity was an accepted or condoned part of the work environment.

2. Contagious Diseases

For the contagious disease to be compensable there must be an inherent risk of contracting the disease in the nature of the employment which had causative significance, and where there:

1. is **significantly greater** than the ordinary exposure risk of the public at large; or
2. is acquiring a **kind of disease** to which the public at large is not normally exposed.

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A worker is not entitled to compensation simply because he or she contracted the disease while in the course of employment.

For example, a claim for meningitis may be accepted from a health care provider who was engaged in the treatment of a patient with meningitis. Here, the nature of the employment involved a risk of contracting a disease. Conversely, a claim would not be accepted from a worker where there was an outbreak of meningitis affecting the community at large. The disease would be viewed as a public health problem.

3. Removing Oneself From the Course of Employment

Workers are not entitled to compensation if they have removed themselves from the course of employment by their actions. Actions which may be considered as removing oneself from the course of employment include, but are not limited to:

a) activities which are exclusively personal;

b) criminal acts;

c) intoxication, when drinking or the use of drugs is not permitted or condoned by the employer and intoxication is a major contributing factor to the incident. However, an injury does not cease to be considered arising out of and in the course of employment merely because some other factor extrinsic to the employment also has causative significance. Injuries are often caused, for example, by inattentiveness due to nausea, depression, lack of sleep, or a variety of other factors, and may still be compensable[1];

d) an intentional self-inflicted injury;

e) fighting, if the worker is an instigator or the issue is purely personal with no employment relationship; or

f) horseplay.

[1] Workers and employers have the obligation to ensure that all workers are not under the influence of alcohol or drugs while performing the obligations and/or expectations of their employment or while present at their worksite.

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4. In the Course of Employment

A worker is considered to be in the course of employment from the time the worker enters the employer's premises to start the work-shift and terminates when the worker leaves the employer's premises. Routine travel to and from work is not considered in the course of employment. Appendix A, which forms part of this policy, contains examples of common scenarios/issues relating to "in the course of employment". This is not an all inclusive list.

5. Presumption Clause

To determine whether an injury is work-related, the decision-maker must weigh the evidence and decide whether the injury both arose out of **and** occurred in the course of the worker's employment. However, in some cases it is not possible to get sufficient evidence to determine that an injury arose **both** out of and in the course of a worker's employment. The presumption clause (section 17 of the *Act*) ensures that the worker receives compensation in cases where the decision-maker can conclude that the worker's injury either arose out of **or** occurred in the course of employment, but not both.

> *For example, a worker is found unconscious on the floor during her normal shift, there are no witnesses to the fall, the worker has no recollection of the incident, and there is no other evidence regarding what may have caused the fall.*

In this example, the decision-maker is satisfied that the injury occurred in the course of the worker's employment. Inquiries must be made and examined as to the circumstances of the injury. If it is concluded that there is no evidence upon which to determine that the injury either did or did not arise out of the course of the worker's employment, section 17 of the *Act* is applied and the injury is presumed to be work-related.

If there is other relevant evidence available, the presumption clause does not apply and instead the decision-maker must weigh all of the evidence and determine, based on the balance of probabilities, whether the injury was work-related.

For further clarity refer to YWCHSB policy, "Merits and Justice of the Case".

ROLES AND RESPONSIBILITIES

Employers have a duty under the *Occupational Health and Safety Act* R.S.Y 2002 *(*sections 3-11) to:

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- 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.

APPLICATION

This policy applies to all individuals who apply for workers' compensation benefits. There may be other policies which deal with specific types of claims.

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 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*.

ACT REFERENCES

Sections 3, 4, and 17
Occupational Health and Safety Act R.S.Y. 2002

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POLICY REFERENCES

EN-02, "Merits and Justice of the Case"

HISTORY

EN-01, "Arising Out of and In the Course of Employment", effective July 1, 2008, revoked July 1, 2009.
CL-42, "Arising Out of and In the Course of Employment", effective October 1, 2007, revoked July 1, 2008.
CL-42, "Arising Out of and In the Course of Employment", effective November 17, 1993.
CL-06, "Out of and In the Course of Employment – Buildings", effective January 1, 1993.
CL-07, "Out of and In the Course of Employment – Parking Lots and Lunch Areas", effective January 1, 1993.
CL-27, "Accidents Arising Out of Travel", effective January 1, 1993.
CL-29, "Use of Facilities and Equipment Provided by the Employer - Captive Worker", effective January 1, 1993.
CL-04, "Claims Involving Alcohol and Drugs", revoked December 16, 2005.

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APPENDIX A

ARISING IN THE COURSE OF EMPLOYMENT

Temporary Worksites

Injuries or illnesses that happen in temporary worksites may be considered to be on the employer's premises when the worker is directed or requested by the employer to be at the place as a condition of the employment.

Shared Premises

Employers may share premises in office complexes or shopping malls with other employers. When the employer rents, leases or owns office space or floor space in a mall, it is implied that there is a "right of passage" through elevators, common stairways, hallways, and parking lots. These shared premises may be considered to be part of the employer's premises.

Working from Home

When working from home, either on a permanent or temporary basis, the worker is considered to be in the course of employment, provided that working from home has been authorized by the employer and the incident occurs while performing a function of the job during hours when the worker would normally be expected to work.

Meal Breaks and Rest Periods

Meal breaks, rest periods or other similar rest periods may be considered to be work-related. This also applies to workers at construction sites or similar workplaces while on meal breaks or rest periods on site. Injuries are not considered to have arisen out of or in the course of employment when a worker chooses to leave the employer's premises to eat or perform other personal errands.

Work-Related Day Travel

Injuries that happen during travel may be considered in the course of employment when the travel is under the direction of the employer, specifically or as an expected part of the work duties.

Only travel by the most direct route qualifies for being in the course of employment. Any detour for personal business removes the worker from the course of employment. Once the journey has resumed, the worker is again considered to be in the course of employment. Breaks, including meal breaks, are considered part of travel and therefore are considered in the course of employment.

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Workers whose employment requires them to travel from home to different job sites (such as installers, pieceworkers, home care workers) are considered to be in the course of employment from the time they leave home until they return home, if travel is an integral part of the worker's duties.

As stated above, routine travel to and from work is generally not considered to be in the course of employment regardless of who owns the vehicle.

Exceptions to this general rule are when:

1. the means of transportation is operated by (or for) the employer.

   For example, workers are in the course of employment if they commute to work in an employer provided or operated bus. Coverage begins from the point the worker boards the bus; or

2. an office worker is expected to travel offsite for business meetings.

Overnight Travel
Workers required to stay away from home overnight may be considered to be in the course of employment. However, workers may not be considered to be in the course of employment when participating in wellness, entertainment, or other recreational activities.

Residential Facilities
Workers staying in a residential facility may be considered to be in the course of employment when the worker:

1. is required to use the premises as a condition of employment; or

2. is permitted to use the premises because the worksite is so remote that the worker had no reasonable alternative for accommodations.

   For example, if a worker burns a hand while cooking a meal, it would be considered to be in the course of employment. If a worker becomes intoxicated and drives an ATV along a steep path in the dark, the worker would be considered to have removed him/herself from the course of employment by serious and wilful misconduct.

Generally, when a worker pays rent to reside at a location provided by the employer, the relationship between the employer and worker becomes that of a

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landlord and tenant and therefore the worker is not considered in the course of employment if incidents occur within the residential facility.

Responding to Employment Related Emergencies and Urgent Business
If a worker is required to make an unexpected or special journey to the jobsite due to an emergency such as fire, flood, robbery or some other unusual event, the worker may be considered to be in the course of employment from the time the worker leaves their residence until returning home unless the worker does not immediately return home or to their regular place of employment following the event.

Parking Lots and Private Roads
Workers may be considered to be on the employer's premises while using:

1. attached or adjacent parking lots owned, operated or leased by the employer;

2. remote parking lots and public land between the remote parking lot and the employer's premises, provided that the employer has arranged parking privileges for the worker at the location; or

3. a private road which is the only access to the workplace. A worker is considered to be in the course of employment when the worker enters the private road unless the worker makes a personal deviation, or is not on the road for employment purposes (for example, showing a friend where he/she works).

Wellness and Athletic Activities
A worker may be considered in the course of employment when participating in wellness or athletic activities on the employer's premises. A worker may not be considered in the course of employment when participating in wellness or athletic activities off the employer's premises, even if the employer pays for the activity as part of a wellness program. The exception is if the employer directs or requires the worker to participate in the activity and the activity is performed at a location designated and/or approved by the employer. (An example would be if a group goes to a retreat to participate in team building exercises which include physical activities).

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