



Modernization of the *Workers' Compensation Act and Occupational Health and Safety Act*

The Government of Yukon is looking to modernize and amalgamate the *Workers' Compensation Act* (the Act) and the *Occupational Health and Safety Act*. Our goals are to:

- enhance workplace safety;
- reduce workplace incidents and injuries;
- improve services for our clients;
- reduce red tape and delays for workers and employers; and
- continue to responsibly manage the Compensation Fund.

With these goals in mind, we are proposing to modernize our legislation to clarify provisions concerning what a worker or a dependent of a deceased worker is entitled to following a work-related injury.

This document is meant to provide some background and an overview of the issues with some possible solutions. Specifically, our morning session will look at the following topics:

- increasing workers' control over how annuities are paid out;
- the definition of permanent impairment and how this benefit is paid out; and
- ensuring fairness in how earnings loss benefits for low-income earners are calculated.

Our afternoon session will delve into the following topics:

- ways to simplify how funeral benefits are paid following a work-related death; and
- ways to encourage worker participation in third party actions.

These issues are not exclusive and the group is welcome to explore any additional questions or solutions it considers important.

Annuities

Workers' compensation systems in Yukon and across Canada pay benefits to injured workers to compensate them for loss of employment income. These benefits are referred to as *earnings loss replacement benefits*. Workers who are in receipt of earnings loss

replacement benefits may not make contributions into the Canada Pension Plan (CPP) during the period they are receiving these benefits. Thus, workers who have been in receipt of earnings loss replacement benefits for an extended period of time may face a reduced CPP benefit when they reach retirement age.

In order to offset this reduction, injured workers who have received earnings loss replacement benefits for a period of at least 24 months are entitled to receive an amount equal to 10 per cent of the total compensation for loss of earnings paid to the worker during the period of disability, plus interest. This is called an annuity under the legislation.

Once the worker turns 65, they are entitled to this amount as an annuity, or if the amount is less than \$50,000, they have the option to receive the money as a lump sum payment.

The Government of Yukon proposes to permit the payment of all annuities as a lump sum, regardless of the amount a worker is entitled to receive. Workers would still have the option to purchase an annuity or other financial product if they so choose, however, it would no longer be a requirement under Yukon Workers' Compensation Health and Safety Board (YWCHSB) legislation.

Questions for discussion:

1. What are some benefits and risks to this approach?
2. Do the benefits outweigh the risks?
3. What are some other options to consider?

Permanent impairment benefits

In addition to earnings loss replacement benefits, there are other forms of compensation. There are some cases where work-related injuries result in a permanent physical or functional abnormality, loss or disfigurement. Examples of permanent impairments include loss of limbs, permanent and measurable loss of movement in joints, loss of hearing, loss of sight and paralysis. A worker with a work-related permanent impairment is entitled to a *permanent impairment award*.



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It should be noted that a permanent impairment award is not related to a worker's ability or inability to engage in work, and for this reason, permanent impairment awards are separate from earnings loss replacement benefits.

Decision makers determine entitlement for permanent impairment awards. They do this by requesting that YWCHSB's medical consultant assess whether a permanent impairment exists, and if so, the medical consultant determines the percentage or rating of the impairment. Permanent impairment percentages, or ratings, are based on the *American Medical Association's Guide to Evaluation of Permanent Impairment*. The amount of the permanent impairment award is then calculated by multiplying the percentage or rating of the impairment by 125 per cent of the maximum wage rate in effect for the year the injury occurred. A worker has the option of receiving the permanent impairment award as a lump sum payment or as an annuity.

The Government of Yukon proposes to update the definition of permanent impairment and have all awards be paid to an injured worker as a lump sum only. This approach aims to provide clarity for workers and simplify the way this benefit is paid.

Questions for discussion:

1. What are some benefits and risks to this approach?
2. Do the benefits outweigh the risks?
3. What are some other options to consider?

Earnings loss benefits for low-income earners

When a work-related injury results in a worker's loss of earnings beyond the day of injury, a worker is entitled to receive *loss of earnings benefits* equal to 75 per cent of their proven or estimated pre-injury earnings up to the maximum wage rate.

Earnings loss benefits are tax-free. For low-income earners who are in a lower tax bracket, however, receiving 75 per cent of their pre-injury earnings may

cause hardship. The legislation allows for a modification to this general formula.

- If a worker is *permanently totally* disabled, then they are entitled to the greater of 75 per cent of their pre-injury earnings, or the minimum benefit amount, which, for 2019 is \$22,286 per year.
- If they are *temporarily totally* disabled and currently earn less than \$22,286 per year, they are entitled to 100 per cent of their pre-injury earnings up to the minimum benefit amount.

These provisions apply only to workers who are *totally* disabled. These provisions do not apply to workers who are *partially* disabled, either temporarily or permanently.

- If an injured worker who is a low-income earner is functionally able to work, but with reduced earning capacity, they are considered *partially* disabled. These workers would receive 75 per cent of their pre-injury earnings, regardless of whether their earnings are less than the minimum benefit amount.

The Government of Yukon proposes that earnings loss benefits for all workers whose pre-injury earnings are at or below the minimum amount be increased to 100 per cent of their pre-injury earnings, regardless of whether they are partially or totally disabled. This approach aims to enhance fairness and encourage an early and safe return to work.

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2. Do the benefits outweigh the risks?
3. What are some other options to consider?

Funeral expenses

If a worker dies as a result of a work-related injury, YWCHSB pays:

- a. funeral expenses;
- b. additional expenses incurred as a result of the death; and
- c. actual costs of transporting the body to the deceased's residence, if in Canada.



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For 2019, YWCHSB will pay funeral expenses, verified by receipts, to a maximum of \$9,625. Additional expenses incurred as a result of the death, as verified by receipts, are paid to a maximum of \$4,811. These amounts are indexed yearly based on the Consumer Price Index for Whitehorse.

During a difficult time for the family of a deceased worker, the family is required to provide proof of payment before they receive reimbursement for these expenses.

The Government of Yukon proposes to simplify this provision by providing a set amount for (a) and (b) as a benefit payable by lump sum, without the requirement to provide receipts, easing the family's burden during a very difficult time. Transportation expenses (c) would continue to be reimbursed based on actual costs.

Questions for discussion:

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2. Do the benefits outweigh the risks?
3. What are some other options to consider?

Third party actions

There are some situations where a worker is injured in the course of their employment as result of a negligent act by a third party. Some common examples include motor vehicle accidents, plane crashes, slips and falls (on a premises not owned by the employer) and dog bites.

For all work-related injuries, a worker will receive compensation benefits for their injury, regardless of whether there is a potential third party action available.

If a third party action is available in relation to a work-related injury, YWCHSB becomes an assignee with all rights to any cause of action relating to the work-related injury. Damages or money owing for injuries sustained by the worker would be recovered by YWCHSB in a third party action. If the action is successful and money is received from the third party, YWCHSB must first pay legal costs and disbursements

associated with the action, then costs of YWCHSB (medical benefits, earnings loss and other compensation paid). After these expenses are paid, excess funds are paid to the worker, subject to any reserve required to pay future costs of their claim.

A third party action is a complex and lengthy process that requires the participation of the worker to obtain the best possible settlement on behalf of the worker and the Compensation Fund.

To encourage the participation of a worker in a third party action, the Government of Yukon is proposing to allocate a specified portion of any settlement to the worker before YWCHSB recovers the compensation costs.

Questions for discussion:

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