

## *Workers' Safety and Compensation Act*

January 2022 Policy Engagement

### Stakeholder Feedback Summary Reports

This is a summary of all the stakeholder feedback received throughout January and February 2022. Comments of a similar nature are compiled into a single statement on the following policy amendment proposals:

- Prevention Statement
- AP-01 Reconsiderations
- EA-01 Reporting Payroll and Payment of Assessment Premiums
- EA-14 Coverage for Workers Outside of Yukon
- EL-01 Loss of Earnings Benefits
- EN-12 Permanent Impairment

Other feedback not pertaining to these policy amendment proposals is contained in a separate section entitled 'Other Feedback Received' at the end of this document.

#### Prevention Statement

- Should include the terms 'incidents' and 'illnesses'
- Is stating that prevention in the workplace being the most important job a bit aspirational?
  - Perhaps a bit of overreach or unrealistic
  - Workplaces are not created to prevent injuries

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## AP-01 Reconsiderations

### General Comments

- Clarify when timeframes can be extended and who makes this decision:
  - Timelines should be particularly clear around holidays that may shorten the number of days allowed for a response
- The definitions section should include a definition of 'injury' and include 'illness'
- Decisions that are 'administrative or incidental nature' - This is very broad and could lead to confusion. Definitions should be clarified to address:
  - Who determines when a decision is administrative or incidental?
  - What is the intent of this clause?
  - Concern with the power given to the board
- Preliminary Issues clause is not clear:
  - Does an application meet the requirements for a reconsideration?
  - What is the standard required to be an acceptable request?
  - 'Individual' should be changed to 'party' as this would help clarify who can request a reconsideration
- Method of Reconsideration:
  - Reasonable timeframes needs more clarity and possibly change wording to reflect the intent of the clause (time to respond)
- The term 'decision' is used several times and needs further clarity each time it is used about which decision is being referenced. It is not always clear whose decision is meant:
  - that of the original decision maker, or
  - of the person reconsidering that decision, or
  - a decision by someone else?
- Right to Refuse:
  - Needs to balance the ability to continue working with the timeline for reconsideration. There needs to be enough time to provide the opportunity to intervene
  - Needs to be clear that the complainant needs to include their union, if applicable
- There is a typo on page 8:
  - Section a. – the last line should read “and policies of the board of directors;”

### Gaps in the Policy Proposal

- “giving direction” (page 9 and 11) - to whom? No idea when it might be 'necessary'. Who determines that? Based on what?

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Additional Comments

- No feedback received

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EA-01 Reporting Payroll and Payment of Assessment Premiums

General Comments

- Policy is clear, reasonable and easy to understand; looks good in general
- A lot of work has gone into this policy proposal
- Has the payroll estimate deadline been removed?
- Will there be guidance provided regarding clearance certificates for contractors from outside of the Yukon?
- There is an opportunity to provide guidance as to when someone should have a clearance letter:
  - Perhaps clarify whether the employers *must* request clearance letters and if so, provide the reference to the Act
  - Policy could include a statement directing the reader to where this could be found

Gaps in the Policy Proposal

- No feedback received

Additional Comments

- Policy communication is good overall
- Why was 'injury' chosen over 'incident'?
- Can incident be added to the definitions?
- Clarity is needed on the month the employer is reporting for by the 15th of each month
- Well laid out and readable

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EA-14 Coverage for Workers Outside of Yukon

General Comments

- First paragraph – Suggest revised wording from "... or claim compensation under this Act" to "...under the Yukon legislation"
- Like that the details are being clarified
- The process for how a worker decides in which jurisdiction to file a claim needs to be clearer
- The word 'automatic' should be added in the first paragraph on page 3 to provide clarity
- The last sentence in the section about applying for extended coverage needs to be clearer (Page 5)
- Board needs to ensure communication around this policy includes all affected stakeholders
- This policy proposal is a positive change

Gaps in the Policy Proposal

- No feedback received

Additional Comments

- No feedback received

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## EL-01 Loss of Earnings Benefits

### General Comments

- The distinction between 'provisional' and 'short-term' could be made clearer
- On page 7 the last paragraph pertaining to seasonal workers under 'Short-term loss of earnings benefits' says, "may be entitled"; the next paragraph says, "is entitled":
  - Suggest removing this confusion
- The statement "If there are interruptions of earnings in either of the two calendar years, the board may extend the time period back used for calculation for the same duration of the interruption" is confusing
- Ongoing concern with the lack of hyphens in 'Loss of earnings benefits':
  - Suggest including hyphens "Loss-of-earnings benefits", or
  - Using "earnings-loss benefits" or "benefits for loss of earnings"
- The new coverage is a great way forward for minimum wage workers
- If something happens in the first 90 days, this is a problem for seasonal workers
- There needs to be a consideration for repetitive injuries, especially with people working longer hours due to COVID
- The last paragraph on retroactive recalculation is confusing and may require revision to clarify (Page 7)
- The first paragraph under 'Long-term loss of earnings benefits' is confusing. Does it apply to seasonal workers or long term workers? (Clarification was provided that it applies to all workers)
  - It needs to be understandable then by the general public not just experts at the board
- Belief that the language in the Purpose, Definitions, and sections of the new Act allows for health benefits to be included in coverage as a "may be supported" clause. As such, there's a request that:
  - The policy for this section include continuation of all employee health benefits (e.g. medical, dental, physio, massage, chiro, etc.),
  - The full costs of benefits be supported by employers, the YWCHSB, or a combination of the two,
  - The policy use 'shall be supported' language versus 'may be supported', and
  - That support includes the full cost of family benefits

### Gaps in the Policy Proposal

- No feedback received

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Additional Comments

- No feedback received

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### EN-12 Permanent Impairment

#### General Comments

- Is this a one-time payment?
  - Important to clarify this in the policy; possibly add to the definition of permanent impairment
- How is the timing of the assessment determined? How will the board determine a worker has reached maximum medical improvement? (Clarification was provided that medical experts involved in the claim make the determination of maximum improvement)
  - Then suggest this information be included in the policy for clarity as the timelines could vary with the type of injury
- Definition of 'permanent impairment' statement refers to physical injuries, not psychological; suggest rewording to include all types of injuries (Page 3)
- Clarify what 100% refers to; 100% of what (Page 4)?
- Correct typo; it says 2023, instead of 2022 (Page 6)
- Who provides evidence of permanent impairment? What is the worker has not recovered as expected? (Clarification was provided that medical evidence is provided to the board by medical professionals involved in the claim. Updates are sent automatically by the practitioners. If it is determined the worker hasn't recovered as expected or has deteriorated, there can be a top-up payment issued)
  - This should be clarified in the policy as the worker may be unaware
- Clarify who initiates the review, who provides the documentation and who is responsible for getting it. Including examples may be helpful to provide clarity to the reader
- Examples of calculations are very helpful in understanding the policy

#### Gaps in the Policy Proposal

- No feedback received

#### Additional Comments

- No feedback received



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### Other Feedback Received

During the engagement additional feedback was received on aspects of the legislation and it is summarized here.

- Concerning Division 6 of the Act - PROHIBITION AGAINST REPRISALS (Sections 53-56):
  - Regarding Section 54(1)(a), is the intent that it follows any dispute resolution process?
  - Clarification is needed to identify when and how workers will be limited to choosing a path
  - How will workers be informed they can only choose one path, and what agency is responsible for informing them?
  - What happens to a worker who is already engaged in a union dispute resolution process, and experiences reprisal as a result? Are they by default locked out of bringing an issue to the board?
  - Workers should not be compelled to choose a path; request for a model like the Yukon Human Rights Commission uses where the paths are sequential, not exclusive
  - The union dispute resolution path needs to be resolved prior to engaging the YWCHSB path
  - Concerns were raised about the duty of fairness in the case of an arbitrator's final decision with no right of appeal
  - Clarification is required around which decisions go to a board official and which go to an arbitrator?
    - How is the board official selected?
    - What model is used for selection and hearing the review?
    - Could this be put in a procedure instead of the policy?
  - What recourse does a union have if it is determined the union has committed an offense? What is the avenue for appeal?
- Concerns were raised about the lack of union involvement in a reconsideration
  - It needs to be clear that the complainant needs to include the union
  - If the complainant withdraws but the issue still needs to go forward from a union perspective, there needs to be clarification of this, as well as the roles, methods, and timing
- Concern that the new Act limits union representation; this is viewed as a detriment to workers and the unions who represent them