



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

Acts modernization external advisory group meeting 8 – compliance and enforcement issues

Mount McIntyre Recreational Centre, Whitehorse

Wednesday, December 11, 2019, 12:30 p.m. to 2:30 p.m.

Introduction

This is a summary of comments made by participants at the external advisory group session on December 11, 2019. For more information on the topics that were discussed [download](#) the appeals paper.

Method

Participants were divided into groups randomly and were asked to discuss acts modernization policy topics. Through group discussions that included Yukon Workers' Compensation Health and Safety Board (YWCHSB) staff, participants had their thoughts recorded on poster paper. The groups discussed three questions for each topic.

1. *What are the benefits to this approach?*
2. *What are the disadvantages/risks?*
3. *What are some other options to consider?*

The poster paper notes are reflected in this document.





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

Fines and administrative penalties – *Workers' Compensation Act*

Proposal

The Government of Yukon is proposing to update the legislation to permit the use of administrative penalties for violations of the *Workers' Compensation Act*. This approach would allow the opportunity for quicker, less costly enforcement of legislation and is consistent with other jurisdictions.

Benefits

- Flexibility, ability to be nimble;
- Filling current gaps in legislation;
- Provide opportunity to fill current vacuum;
- Remove current constraints;
- Everyone paying fair share;
- Will only be an issue for those not in compliance;
- Positive change for those in compliance, so as not to support those not in compliance;
- Levels the playing field;
- Enhances compliance;
- More concise penalty structure;
- Compliance through money, not the courts;
- Deters fraud from false claimants;
- Fair process for all employers;
- Decreases court-associated fees;
- Weak penalty amount now; policies can be updated more easily;
- Employer can understand consequences of their actions;
- Centralizing of penalties/user friendly;
- Encourages return to work;
- Relevant penalties may encourage compliance;
- Relevancy for specific fines;
- More current;
- Fair and equal process;
- Moves claims along at a quicker pace;
- More effective and timely to make changes;



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

- Aligned with other jurisdictions;
- Easily understandable and updated in timely manner;
- Better buy-in; and
- Less frustration.

Risks and challenges

- Changes in policy may create confusion if not communicated; and
- If no changes, employer rates likely to go up.

Other options to consider

- More auditors may help with compliance;
- Legislate that records be open;
- Define powers of inspectors;
- Have penalties for claimants;
- Is it an offence to bully/harass staff at YWCHSB?
- Fines used to bring improvement to action;
- Fine use for positive effect – community, culture change;
- Ensure written in a way accessible to all people; plain language – policies can be written in a user-accessible way;
- Potential increase in appeals, new aspect of appeals; and
- Good communication strategy necessary.



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



Fines and administrative penalties – *Occupational Health and Safety Act*

Proposal

The Government of Yukon is proposing to update administrative penalties and fines to encourage compliance and improve workplace safety.

Benefits

- Safer, especially for construction companies who rush safety planning;
- Prevents employer from seeing it as “cost of doing business”;
- Better deterrent effect;
- Increased worker safety;
- Accountability is critical;
- Could lead to employers investing more upfront in worker safety -> personal protective equipment (PPE), other;
- Better compliance should lead to less costs to the system and less injuries -> increased worker protection;
- Increased safety, likely more compliance;
- More accountability, employer more accountable for work sites;



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

- Gives compliance officers more flexibility to deter without having to take employer to court;
- Less incidents, fatalities, generally increased workplace safety;
- Good to have discretion without needing prosecution;
 - Less time spent in the court system.
- Would lead to increased prevention; and
- Maintains discretionary powers for safety officers.
 - Allows positive relationships between occupational health and safety (OHS) officers and employers to continue in many situations; and
 - Good to increase consistency with other Canadian jurisdictions.

Risks and challenges

- Employers and workers may hide injuries/safety issues;
- Don't want honest, small employers to be hit with too high a fine on first visit;
- Don't want fines/administrative penalties applied inconsistently;
- Could end up with some employers covering up hazards/injuries;
- Temporary workers may cover things up out of fear for employment;
- Could be seen as negatively affecting industry;
- Doesn't help employers who are already in compliance;
- Dollar caps might not be too low if only four max penalties in under eight years;
- Negative backlash;
- Yukon has many smaller employers than most other jurisdictions;
- With no change, current behavior may continue; and
- Companies may cover up safety hazards, would put workers at greater risk.
 - Workers also may cover things up.

Other options to consider

- Currently some employers/workers do have a stigma against OHS processes/workers;
 - Don't want people on compensation claims, some think they will pay more if more injuries.
- Fine rating based on size of business;
- Need a balance, clear guidelines so employers can see what exactly to expect;
- Keep in mind the goal is to enhance safety;
- Need education on rules how the process works overall including fine amounts;



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

- Training/education from YWCHSB; and
- Need buy-in from employers.
- Increased monitoring of worksites could lead to better compliance;
 - A reward system for great safety records would also increase compliance with safety legislation.
- Not all employers can cover training costs, need to ensure it is accessible;
- Have some sort of alternative way to bill/fine employers;
- Sliding scale based on size of business, profit margins -> need to look at lots of organizational information prior to setting fine amount;
- May want a provision for OHS penalties that says you can't fine them out of business;
- Many employers aren't willfully in non-compliance, more are just ignorant of legislation;
- Use fine revenue for education programs;
- Fine/penalty amounts and process can be quite confusing for many currently -> increased clarity;
- Ideal is to increase safety without increasing penalties; and
- Scalability of fines/penalties appropriate to company size as YWCHSB does not want to put people out of business.





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

Alternative orders

Proposal

The Government of Yukon is proposing to adopt a similar approach, allowing alternative orders to be made by the court when a person has committed an offence under OHS legislation. This approach educates workers and employers on injury prevention and may potentially improve the health and safety culture in Yukon workplaces.

Benefits

- Improvement to safety culture;
- Employers – seeing fee going towards solving the problem;
- Reduces fines being a cost of doing business;
- Positive – targeted at prevention?
- Combining Corporate Social Responsibility (CSR) with safety culture;
- Will help YWCHSB to impact positive change;
- Organizations are forced to enhance safety culture;
- Public knowledge – see what value has been added to health and safety systems; and
- Provides options, allows court to get creative.

Risks and challenges

- Non-compliance - order (when not specific);
- Public service announcement; benefit to companies?
- Solvency of the Compensation Fund?
- Fees levied at a higher rate;
- Fairness in amounts (fees) -> transparent and equitable;
- Question: fine and order could impose financial risk to employer?
- Business got off easy? PR/messaging;
- Capacity of organization – keep it simple;
- Favouritism – industries;
- Ensuring monetary value is equitable – transparent and fair;
- Employer reputation?
- Courts could go too far?
- Make reprimand reasonable; and



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

- Could this incentivize prosecution?

Other options to consider

- Compliance - \$1,000 fine of remedy action;
- Leave decision on where funds go to YWCHSB;
- YWCHSB able to dispose general funds (revenue);
- Sliding scale of fines and severity of action?
- Expand remedies – scholarships, education, messaging/outreach;
- Court order – public education: speakers;
- Money should go to help people get back into work;
- Administrative steps to enforce orders (YWCHSB);
- Fill gap between order amount and program implementation; and
- Social/community initiatives.





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

Limitation periods

Proposal

The Government of Yukon is proposing to establish time limitations that aim to improve consistency and allow adequate time for investigation of all matters.

Specifically, we are proposing to:

- establish a two-year time limitation for all prosecutions that begins the date the offence occurs or when YWCHSB becomes aware of the offence, whichever is later; and
- establish a one-year time limitation for administrative penalties that begins the date the offence occurs or when YWCHSB becomes aware of the offence, whichever is later.

Benefits

- Consistency between OHS and YWCHSB;
- More opportunity to catch bad performers and correct violations;
- Possible increased timely reporting;
- Burden of proof/complexity of investigations is increasing;
- Current timeline is too short – rushes OHS (admin level);
- Better opportunity to do complete investigations;
- Deterrent to delaying reporting;
- Decisions are less rushed, more informed;
- Increase reporting, less deception from bad performers;
- Consistency with OHS and YWCHSB; consistent with other jurisdictions;
- Easier to understand when consistent;
- Enough time to finish investigations;
- Reasonable – as long as there is extensive communication;
- More communication – less surprises for employers; and
- Increased safety = safer workplaces.

Risks and challenges

- Longer period of uncertainty for employers;
- Difficulty preparing evidence;
- For employers, staff turn-over may impact consistency/reporting/follow-up;



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

- Wait period could become adversarial;
- One year may be too long, many procrastinate if too much time given;
- Cookie cutter approach for complicated situations;
- Potential negative impact on Yukon Government – government looks to cut costs not increase spending;
- Longer period may increase anxiety for workers;
- Employers likely to want quicker resolution;
- Are more resources required? Potential increased costs to system;
- Increased costs to employers may cause job losses/business closures;
- Possible delays in resolution;
- Loss of information/evidence;
- Seasonal employers may not be active after a longer period;
- Employers will need increased communication and transparency to avoid not knowing about process;
- Harder to get information as time passes;
- Who informs employers if not on site?
- Ensure all parties know their legal responsibilities ; and
- How far back can OHS go?

Other options to consider

- Need communication options during investigation period;
- Establish framework for hierarchy of offences – longer period for more serious investigations;
- What do other Workers' Compensation Boards and OHS do?
- Flexibility in time limits – lower for minor infractions; longer for more serious;
- Consider history of employer;
- Provide more tools for employers to know their responsibility and faster investigations;
- Provide education around changes;
- Consider other time frames;
- Use of technology to inform employers (email orders to employers); and
- Limitation on how far back incidents can be prosecuted/fined.



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

Parking Lot

When questions or statements arose throughout the meeting that were unrelated or were not covered by the topic under discussion, participants were encouraged to record thoughts on the “parking lot” poster paper.



Enforcement

Section 31 - Posting of notices

The director may require an employer to post and keep posted a notice relating to the administration or enforcement of this Act or the regulations in a conspicuous place where it is most likely to come to the attention of employees, and the employer shall post and keep posted any such notice.

Conflicts with Section 41

If a safety officer gives an order in writing or issues a report of an inspection to an employer or person in charge of a workplace, the employer or person in charge shall immediately cause a copy or copies thereof to be posted in a conspicuous place or places in the workplace where it is likely to come to the attention of the workers and shall furnish a copy of the order or report to the health and safety representative and the committee, if any, and the safety officer shall cause a copy thereof to be furnished to the person who complained of the contravention of this Act or the regulations.



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

Section 32 Inspections and Tests

Section 32 (1) is inspections.

Section 32 (2) is investigations.

These are two distinctly different duties and should be separated. An investigation required subpoenas.

Currently all orders requesting documentation are referencing 32 (2).

Section 33 (5) and (6) require (warrants for investigations).

Section 40 (2) A safety officer who gives an order under subsection (1) shall affix to or near the place, matter, or thing, or any part thereof, a notice in the prescribed form and no person expect a safety officer shall remove the notice unless authorized by a safety officer.

Where does this form exist? Usually this is a regulation.

Section 44 Offences and Penalties

Consider adding "Corporate fines". A corporation is not a person hence it cannot be fined or jailed?

Simply to read.

1. Any person who contravenes or fails to comply with
 - a. A provision of the Act or the regulations or;
 - b. An order or requirement of a safety officer or director.

Is guilty of an offence and on conviction is liable to a fine of not more than \$300,000 or to imprisonment for a term of not more than 12 months or both.

2. If a corporation is convicted of an offence under subsection (1) the maximum fine that may be imposed upon the corporation is \$1,500,000.