



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

Compliance and Enforcement Issues

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

- enhance worker 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 and update compliance and enforcement provisions.

This document is meant to provide some background and an overview of the issues with some possible solutions. Specifically, the following will be discussed:

- ensuring the administrative penalties issued by YWCHSB and fines issued by the court are effective in deterring non-compliant workplace behaviours;
- providing additional powers to courts to make alternative orders that enhance safety and prevention of injuries; and
- limitation periods for administrative penalties and prosecutions that enhance fairness and allow adequate time for investigations.

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

Fines and administrative penalties

Workers' Compensation Act

Under the *Workers' Compensation Act*, if a worker or employer violates a provision of the Act, they commit an offence. There are two ways in which compliance of this legislation is enforced – penalties and prosecution.

There are some limited provisions where failure to comply results in a specific penalty. One example is a penalty for late reporting of payroll levied against an employer.

If there is no specific penalty tied to a provision, then prosecution is an enforcement option. For example, a worker who knowingly provides false or misleading information about how they were injured commits an offence under the *Workers' Compensation Act*. It is also an offence if an employer discourages a worker from making a claim for compensation when the worker has or may have suffered a work-related injury. Offences such as these may involve costly and lengthy prosecution in Yukon Territorial Court. If convicted, a person may be liable to a fine up to \$5,000 or up to six months imprisonment, or both.

With exception of specific penalties tied to certain provisions, there are no general provisions in the legislation that allow Yukon Workers' Compensation Health and Safety Board (YWCHSB) to enforce compliance of the *Workers' Compensation Act* by way of administrative penalties.

In some jurisdictions, workers' compensation legislation permits prosecution *or* the issuance of an administrative penalty when a person commits an offence.

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.

Occupational Health and Safety Act

Under the *Occupational Health and Safety Act*, there are two tools available to enforce non-compliance of the legislation: administrative penalties and prosecution.

When a contravention of the *Occupational Health and Safety Act* results in prosecution, a court may order a fine up to \$150,000 for a first offence. On second offence, a fine may be issued up to \$300,000.



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As an alternative to prosecution, a safety officer may levy an administrative penalty. On first offence, a penalty may be issued up to \$5,000, and on second offence, up to \$10,000.

Current fines set out in the *Occupational Health and Safety Act* are out of date and relatively low compared to other jurisdictions. They, therefore, may not serve as an effective deterrent for non-compliance and unsafe workplace behaviours. For example, some employers may view current administrative penalties as the cost of doing business.

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

Questions for discussion:

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

Alternative Orders

While fines resulting from prosecution may encourage compliance with occupational health and safety (OHS) legislation, they do little to educate workers and employers on injury prevention.

Other Canadian jurisdictions' legislation provide additional powers to the court to order a person who has been convicted of an offence under OHS legislation to pay monetary amounts towards other initiatives aimed at enhancing health and safety in the workplace. Some examples of these initiatives include:

- training or educational programs relating to workplace safety; and
- the establishment and maintenance of scholarships towards attaining education in health and safety-related disciplines.

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.

Questions for discussion:

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

Limitation periods

Under the *Occupational Health and Safety Act*, the director of OHS has one year from the time an offence occurs to commence a prosecution. This means OHS has one year to complete its investigation into an alleged violation of the legislation – a timeline that is often difficult to work within given the complexity of these situations and remoteness of many Yukon workplaces.

Sometimes, OHS is not made aware of an offence until months or even years after it has occurred, at which point OHS can neither investigate nor prosecute. This means that OHS is not always able to pursue enforcement of safety violations. This increases the risk of unsafe work environments which could lead to serious injuries and fatalities.

Safety officers have 30 days to levy an administrative penalty for offences under OHS legislation. This amount of time is often inadequate, not allowing for comprehensive and fair investigation into a matter. The time limitation to commence prosecution under the *Workers' Compensation Act* is three years. This time period refers to the day the offence has occurred until the day the charges have been laid in the prosecution.

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



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- 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.

With this approach, the legislation would provide more effective compliance tools to influence workplace safety.

Questions for discussion:

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