



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

Assessment 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 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 some of the provisions in the employer assessments area.

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

- when those engaged in domestic service (e.g., house cleaners, personal attendants for the infirm) should be considered workers under the *Workers' Compensation Act*;
- clarifying coverage limits when employers send workers outside the Yukon for work;
- changes to ensure fairness of earnings loss benefits for those who purchase optional coverage; and
- how Yukon Workers' Compensation Health and Safety Board (YWCHSB) can ensure that employers are not bearing the costs of other employers who default on the payment of their assessment premiums.

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

Domestic service workers

The definition of “employer” means every person, partner, firm, association, organization or corporation having in their service one or more workers in an industry, and includes a person who employs a person

in their domestic service otherwise than on a casual basis.

Currently the *Workers' Compensation Act* does not define “otherwise than on a casual basis” with regards to who would be considered a worker in the domestic service industry. This is somewhat ambiguous and subjective. Other jurisdictions have addressed the issue in either legislation or policy.

The Government of Yukon is proposing to clarify the criteria that must be met for a domestic service worker to be considered a worker under the *Workers' Compensation Act*.

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?

Work outside Yukon

When Yukon workers are required by their employer to work outside Yukon, the *Workers' Compensation Act* provides those workers with workers' compensation coverage if they are injured outside Yukon. The proposed changes to coverage for work outside Yukon, both inside and outside Canada, would reduce red tape and make it easier for Yukon businesses to take on work outside the territory, enhancing labour mobility. The changes would also give employers and workers clarity on their responsibilities and coverage when working outside the territory.

It is important to note that extended coverage for workers does not remove an employer's responsibility to follow the laws in other jurisdictions, including registering and paying assessments if required.

Work outside Yukon, within Canada

Currently, for coverage to be extended outside Yukon but within Canada:

- the work must be temporary, lasting less than 12 months;



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- the worker must be either a resident of Yukon or usually employed in Yukon; and
- the work outside Yukon must be a continuation of the employment by the same employer in Yukon.

For work undertaken outside Yukon but within Canada, all workers are automatically covered for 12 months with no application process required. The length of time that coverage is extended in Yukon is almost double that of any other province. The intent of this provision is to cover workers *temporarily*.

The Government of Yukon is proposing to:

- align the period of extended coverage with other Canadian provinces, enhancing interjurisdictional harmonization;
- reduce the time for extended coverage from 12 months to 6 months; and
- allow for extensions beyond 6 months upon application.

Work outside Canada

Currently, for coverage to be extended outside Canada, an approved application is required prior to travel. In addition to meeting the criteria for work outside Yukon but within Canada (listed above), applications will only be approved if employers can show:

- workers will have access to health care similar to Yukon's; and
- workers will not be at risk due to civil unrest or conflicts in the place they'll be working (based on Government of Canada travel advisories).

The Government of Yukon is proposing to automatically cover workers travelling outside Canada for less than 10 consecutive days. Employers with workers travelling outside Canada for 10 or more consecutive days would still be required to apply for extended coverage. This will make it easier for workers and employers to ensure that they have compensation coverage for work outside Canada.

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?

Changes to optional coverage to ensure fairness of earnings loss benefits

Under the current *Workers' Compensation Act*, there are two basic types of employers:

- those who have a mandatory requirement to register and pay assessments to YWCHSB for their workers;
- those who have the option to purchase coverage; and
- persons who have an option to purchase coverage are entities such as sole proprietors and partners in partnerships.

When a sole proprietor or partner buys optional coverage it is recommended they purchase coverage based on their proven earnings in past years (for established businesses) or a reasonable estimation of what they expect to earn (for newly established businesses). Ultimately the choice is theirs.

For employers that have a mandatory requirement to register, workers may be entitled to two types of earnings loss benefits.

- a short-term benefit rate for the first 90 days.
 - a worker is entitled to a rate based on the worker's earnings over two full pay-periods, or one month, before the injury arose.
- a long-term benefit rate for longer than 90 days.
 - a worker is entitled to a rate based on a worker's proven earnings in the more favourable of the two calendar years before the injury arose.

Under the current system, there is no distinction made between short-term and long-term benefits for sole proprietors or partners. If a sole proprietor or partner sustains a work-related injury and is entitled to earnings loss benefits, their benefit rate is based on their actual proven earnings, or the amount of optional



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coverage in place at the time of the injury—whichever is less.

The Government of Yukon is proposing that all workers receive short and long-term earnings loss benefits. Specifically, the proposal is that short-term benefit rates for sole proprietors and partners will be based on purchased coverage, and long-term benefit rates will be based on proven earnings or purchased coverage, whichever is less.

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?

Directors' liability

Unlike other similar types of legislation, such as the *Income Tax Act* and the *Employment Standards Act*, the *Workers' Compensation Act* does not include a provision that allows YWCHSB to collect unpaid assessments of corporations from their directors. If a corporate entity fails to pay the required assessment premiums, becomes bankrupt or has financial difficulties, YWCHSB may not be able to collect unpaid assessment premiums from the corporation. The result is that other employers in the system bear these costs.

The Government of Yukon is proposing to add a provision to make directors jointly liable for the debts of their corporation. This would provide an effective tool for YWCHSB to collect unpaid assessment premiums from the director or directors of a corporation.

Questions for discussion:

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