

Chapter: Employer Assessments

Legislative authority: section 130

Prevention statement

Preventing injuries is one of the most important responsibilities in the workplace. The Workers' Safety and Compensation Act (the 'Act') establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

Purpose

This policy explains employer registration requirements.

Definitions

board means the Workers' Safety and Compensation Board

employer means every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry and as further defined in section 77 of the Act

maximum annual earnings means the amount that is determined under section 77 of the Act

partner means a partner in a partnership

proprietor means a self-employed individual who carries on or engages in an industry

worker means a person who performs work or services for an employer under a contract of service or apprenticeship, written or oral, express or implied and as further defined in section 77 of the Act

Policy statement

1. General

Every association, corporation, individual, partnership, person, society or unincorporated organization or other body having in their service one or more workers in an industry in Yukon is an employer and must register with the board.

Effective date: July 1, 2022

1.1 Registration requirements

An employer must register within 10 days of the date they commence employing workers in the Yukon.

An employer must complete and submit an application for registration to the board, in the required form. The application must be completed in full and include the:

- a. legal name of business, including trade names (verification of name such as corporate registry certificate of status or other identification);
- b. name and address of contact person for business;
- c. names of directors and officers of corporations;
- d. description of nature of business activities and physical location;
- e. average number of workers and date workers commenced working in Yukon;
- f. estimated total payroll of all workers in the calendar year; and
- g. such other information required by the board.

1.2 Payroll reporting and payment of assessments

An employer must report their annual payroll to the board and pay assessment premiums to the board as set out in policy 5.4 Reporting Payroll and Payment of Assessment Premiums.

When an employer has operated for less than one year and has no history of earnings, the board may base the estimated payroll on the experience of a similar business or occupation.

1.3 Minimum assessment premium

There is a minimum assessment premium of \$150.

2. Temporary non-Yukon employers

A non-Yukon employer carrying on business in Yukon on a temporary basis does not have to register with the board and their workers are not covered under the Act.

A non-Yukon employer is considered to be carrying on business on a temporary basis if the employer is

- a. is based outside Yukon; and
- b. has workers who normally work and reside outside Yukon who are performing work in Yukon for fewer than 10 days in a calendar year.

A non-Yukon employer must register if they employ

- a. an individual who is a Yukon resident, working for any period of time, or
- b. any workers in Yukon for 10 or more days in a calendar year.

A non-Yukon employer can apply to the board for coverage for their temporary workers who are not covered and who are performing work in Yukon for fewer than 10 days in a calendar year.

3. Corporations and Directors

A corporation that employs one or more workers in an industry in the Yukon is an employer and must register with the board.

A director of a corporation carrying on or engaged in an industry in Yukon is automatically a worker of that corporation, subject to the following exception:

3.1 Non-working director

A director may apply to the board to be deemed not a worker under the Act. A non-working director is one who:

- a. is not active in the operations of the corporation's business and is not subject to the hazards of the industry of the corporation;
- b. is not performing any work for the corporation while acting in their capacity as a director in Yukon (no directing, negotiating, influencing or decision-making affecting work, and no visits to the corporation's worksites to perform services for the company);
- c. does not receive any earnings as payment for work performed for the corporation; and
- d. does not receive a T4 or T4A from the corporation (except for fees related to attending annual general meetings and other incidental duties as a director).

A non-working director may attend the corporation's annual general meeting, perform infrequent banking or legal filings and still be considered non-working.

As a result of the board deeming the director not to be a worker:

- a. the non-working director is not entitled to compensation benefits in the case of a work-related injury; and
- b. the corporation and non-working director do not have immunity from civil law suits arising from work-related injuries.

A non-working director must file an application to the board each calendar year.

4. Proprietors and partners in a partnership

A proprietor or partnership that employ one or more workers in an industry in Yukon is an employer and must register with the board. However, the Act does not automatically cover the proprietor or the partners themselves.

A person who is a proprietor or a partner of a non-incorporated business can apply for optional coverage. Refer to policy 5.6 Optional Coverage for the application process and conditions of coverage.

With the purchase of optional coverage, the employer and worker will be immune from civil law suits resulting from work-related injuries and a worker who suffers a work-related injury will be eligible for compensation benefits.

A proprietor, who does not have any other workers and who has not purchased optional coverage, who does work in an industry for another employer in that industry, may be deemed by the board to be the worker of that other employer.

The intent of the deeming is to ensure coverage for that proprietor and immunity from civil suit for the employer hiring the proprietor while working for that employer.

4.1 Factors to determine whether a person is a worker or a proprietor

When determining whether an individual is a worker in an employment relationship with an employer or whether an individual is an independent proprietor of a business, the board considers all of the following tests and factors:

- a. ***Degree of control:*** this test determines the degree to which one person or business entity controls the work of the other person or body. The greater a person's freedom in matters such as the manner in which the work is performed and quality assessment, hours of work, location, remuneration, and decisions regarding termination, the more likely that the person is a proprietor and not a worker.
- b. ***Ownership of major equipment:*** in an employment relationship, the employer generally supplies the major equipment required by the worker and covers costs related to repairs, insurance, transportation, rental and operation. In a contractual relationship between a person and a proprietor, the proprietor generally supplies and maintains the major equipment. Major equipment refers generally to revenue generating equipment such as earth moving equipment, mobile welding trucks, computers or photocopiers.
- c. ***Economic reality:*** this test determines whether the person has a chance of making a profit or incurring a loss through the relationship. In an employment relationship, the employer alone assumes the risk of loss and covers the operating costs of the business. The worker does not assume any financial risk and is entitled to receive full payment, regardless of the financial standing of the business. In a contractual relationship with a proprietor, each party may make a profit or incur a loss, and each party usually covers its own operating expenses. There is no guarantee of a steady income, as income depends on the results achieved.
- d. ***Dependence:*** this test determines whether the tasks performed are a critical part of one person's business and whether the other person is economically dependent on the arrangement. If it is the only source of income, it usually indicates an employment relationship exists. If the person is working for more than one employer concurrently, it can be an indication that the person is a proprietor.
- e. ***Integration:*** this test considers the perspective of the person doing the work. The person is more likely to be a proprietor if the work being done is not considered an integral part of the business which the proprietor has contracted with. Where one person integrates their activities into another person's commercial activities, the person is most likely in an employment relationship. The worker acts on behalf of the employer, is connected with the employer's business, and dependent upon it (may include areas such as advertising, regulatory authority, solicitation of business on one's own behalf, use of company logos).

An individual who is a proprietor and not considered a worker of another employer is eligible to purchase optional coverage. Workers of employers are not eligible to purchase coverage for themselves but their employer must register and pay for coverage for them.

5. Interest and administrative fees for late registration

An employer that fails to register with the board within the required 10 calendar days of commencing or recommencing a business may be subject to an administrative fee of 10% of the assessment premiums that would have been payable at the time of registration and applicable interest. Interest rates are set out in policy 5.4 Reporting Payroll and Payment of Assessment Premiums.

The board may reverse administrative fees and interest charges in exceptional circumstances if, as determined by the board, the employer provides justifiable reasons for failing to comply with registration requirements.

History

- EA-02 Determining the Status of a Person: Employer, Worker, Sole Proprietor or Non-Working Director, effective January 1, 2015, revoked July 1, 2022
- EA-02 Determining the Status of a Person: Employer, Worker, Sole Proprietor or Non working Director, effective July 1, 2008, revoked January 1, 2015
- GC-08 Definition of a Worker, effective January 26, 1995, revoked July 1, 2008
- AS-12 Independent Operator/Contractor or Proprietor, effective January 1, 1993, revoked July 1, 2008

- EA-06 Coverage for Directors, effective January 1, 2015, revoked July 1, 2022
- EA-06 Statement and Estimate of Earnings – Value of Service, effective July 1, 2008, revoked January 1, 2015