



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

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 occupational health and safety (OHS) legislation to enhance worker safety by updating provisions aimed at injury prevention and reporting.

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

- clarifying when reporting of a serious incident or injury is required;
- clarifying how a worker exercises their right to refuse unsafe work; and
- changes to modernize and improve how complaints of reprisal are processed.

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

## **Serious incidents and injuries**

When a serious incident, serious injury or death occurs in a workplace, the OHS legislation requires a person with authority over the workplace, usually the employer or prime contractor (if there is one), to immediately report it to Yukon Workers' Compensation Health and Safety Board (YWCHSB). This requirement to notify YWCHSB is mandatory and enforced by OHS.

The notice allows YWCHSB, if necessary, to investigate as soon as possible to determine whether measures are required to prevent future similar occurrences, or whether enforcement measures are warranted.

What constitutes a serious incident or serious injury is specifically described in the legislation. Currently there

is a prescriptive and unnecessarily limiting list that requires an employer to notify YWCHSB of incidents where there has been: a loss of sight of an eye, third degree burns, amputation other than a finger or toe, etc.

The Government of Yukon is proposing to simplify and modernize the language used for the categories of incidents or injuries that should lead to mandatory notice.

The following are suggestions of some types of serious incidents or serious injuries an employer or prime contractor must report:

- an incident that results in serious injury or death of a worker;
- an incident or injury that results in a worker being admitted to hospital;
- an incident involving a major structural failure or collapse of a bridge, building, crane, etc.;
- the major release of a hazardous substance;
- an explosion or fire that has a potential for causing serious injury to a worker; or
- any other serious incident or serious injury specified in regulation.

The majority of other Canadian jurisdictions have a mandatory duty for the employer or prime contractor to do an investigation of serious incidents and serious injuries and then produce a report. Typically, there are minimum requirements the report should include, such as: the nature and circumstances, the machinery being used, the time and place of the occurrence, and the names of witnesses and steps taken to prevent a recurrence.

Currently, Yukon's OHS legislation does not have a mandatory duty to investigate and produce a report.

The Government of Yukon is proposing to add a provision that would include the requirement to prepare a written report outlining the circumstances and corrective measures. A copy of the report would be made available to the joint health and safety committee (if one exists), a safety representative, workers and YWCHSB on request.



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

## Right to refuse unsafe work

A fundamental right under the occupational health and safety system is a worker's right to refuse to perform unsafe work. This right applies to situations that are unusually dangerous and unsafe. In order for a worker to exercise the right to refuse unsafe work, the worker must have a reason to believe that the work or workplace constitutes an undue hazard to self or others.

The refusal to work must be reported immediately to the supervisor or employer who must immediately investigate the situation in the presence of a joint health and safety committee, health and safety representative or another worker selected by the worker refusing to do unsafe work.

Following the investigation and action to remove the hazard (if applicable), a worker may again refuse to do unsafe work if they believe an undue hazard continues to exist.

In this case, the worker must again report the circumstances to their supervisor, who must immediately report the matter to an OHS safety officer.

A safety officer will investigate and determine whether the machine, device, thing or conditions of the workplace constitutes an undue hazard.

The requirement to investigate limits the ability of the supervisor and worker to resolve the situation in an effective and timely manner without involvement of other workplace parties.

The process and unclear wording in the legislation is frequently misunderstood in workplaces. As a result, the safety of workers is compromised.

The Government of Yukon is proposing to adopt an approach that would give the employer and worker the opportunity to remedy the situation before an investigation is required.

Also, it is not clear in the legislation what constitutes an "undue hazard". This terminology should be modernized to refer to "unsafe work", as many situations or work activities can be hazardous. However, if appropriate protections and measures are in place, they are safe to perform.

The Government of Yukon is proposing to more clearly define the trigger for exercising this right. "Unsafe work" could be defined as:

Work activities, conditions of the work, or conditions that would result if the work were done, that would pose a significant risk that the worker or other person might be killed, seriously injured or experience serious illness.

This definition would be subject to situations that would directly endanger the health and safety of another person or are ordinary conditions in that kind of work and appropriate controls are in place.

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?

## Prohibited reprisals

Under all OHS legislation, there is a general prohibition on employers and trade unions from dismissing, disciplining, penalizing, or intimidating a worker because the worker acted in compliance with the safety legislation or, in good faith, sought enforcement of the legislation.

For example, if a worker refuses to operate a piece of equipment because no training was provided and the worker is subsequently fired, this would be considered a prohibited reprisal.



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

The Yukon is unique in that when there has been a finding of a prohibited reprisal by a safety officer, only a *convicting court* can order remedies for a worker (such as reinstatement of their position or payment of missed wages). This requires that YWCHSB choose prosecution as the enforcement tool against the employer when this may not be the most effective course of action.

In other smaller Canadian jurisdictions, a complaint of prohibited reprisal can be referred to an independent arbitrator with the power to order remedies to a worker.

The Government of Yukon is proposing to update and clarify the definition of reprisal as well as provide an administrative process for resolution of prohibited reprisals. This approach would provide an alternative means to access remedies for workers and adjudicate matters between workers and employers, enhancing fairness and promoting timely resolution.

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?