

 <p>Yukon Workers' Compensation Health and Safety Board</p>	Part:	Entitlement	
	Board Approval:	Original signed by Chair	Effective Date: July 1, 2015
	Number:	EN-12	Last Revised:
	Board Order:	2008	Review Date:

PERMANENT IMPAIRMENT

GENERAL INFORMATION

A worker who has had a work-related injury may be entitled to benefits that compensate him or her for a permanent impairment, which is a permanent loss to a part, function or system of the body.

PURPOSE

This policy provides direction to decision-makers under the *Workers' Compensation Act* S.Y. 2008 ("the Act") on the determination and assessment of permanent impairments, as well as on the calculation of and payment of permanent impairment awards to injured workers on or after July 1, 2008, where the date of injury is on or after January 1, 1993.

DEFINITIONS

1. **Annuity:** the payment of money in a fixed amount for a fixed or a variable period of time.
2. **Decision-maker:** a person employed by YWCHSB who has responsibility for making decisions on an injured worker's claim.
3. **Injury:** under section 3 of the *Act*, injury means:
 - a) an injury as a result of an event, or series of events, occasioned by a physical or natural cause;
 - b) an injury as a result of a wilful and intentional act, not being the act of the worker;
 - c) a disablement, but does not include the disablement of mental stress or disablement caused by mental stress, other than post-traumatic stress;
 - d) an occupational disease, which includes a disease from causes and conditions peculiar to or characteristic of a particular trade or occupation or peculiar to the particular employment; but does not include an ordinary disease of life; or
 - e) death as a result of an injury.

- 4. Maximum wage rate:** under section 3 of the *Act*, maximum wage rate for a year means:
- a) \$74,100 as of January 1, 2008; and
 - b) commencing January 1, 2009, and in each year thereafter, the amount resulting from adjusting the previous year's maximum wage rate by:
 - i) the per cent change in the Consumer Price Index for Whitehorse, calculated by using the per cent change between the average index for the twelve month period ending October 31st of the previous year and the same time period one year earlier; however,
 - ii) despite clause a), if the per cent change is greater than four per cent (4%), the per cent change to be used will be four per cent (4%); and, if the per cent change is less than zero per cent (0%), the per cent change to be used will be zero per cent (0%).

Maximum wage rates for 1993 – 2014 are listed in Appendix A to this policy.

- 5. Medical Consultant:** a medical practitioner, recognized under the *Medical Profession Act*, who, on behalf of YWCHSB:

- provides medical opinions;
- reviews and interprets medical reports;
- participates in the management of injured workers' cases;
- examines injured workers;
- comments on medical treatment options; and
- provides assessments and ratings on permanent impairments.

- 6. Permanent impairment:** under section 3 of the *Act*, a permanent impairment “means a work-related injury, not including death, that is not temporary including a disfigurement.” To be a permanent impairment the injury must cause a loss; a loss of use; or a permanent disturbance to a body part, system or function.

PREVENTION

Under section 14 of the *Act*, every injured worker is responsible for taking all reasonable steps to reduce or eliminate any impairment by seeking and co-operating in health care or treatment recommended by YWCHSB, and participating in any medical or other evaluations required by YWCHSB.

Preventing workplace injuries is the responsibility of everyone in the workplace. YWCHSB encourages employers, workers, health care providers and other parties to work together to prevent work-related injuries. When an injury occurs, workers, employers and YWCHSB must co-operate to return the worker to safe, suitable and

available work as soon as functionally possible. This helps prevent disability, ultimately leading to lower assessment rates.

YWCHSB also administers the *Occupational Health and Safety Act and Regulations*. All workplace parties are required by law to know and understand how this legislation applies to their work.

POLICY STATEMENT

In some cases work-related injuries may cause conditions that diminish or disturb the function of a worker's body that may last for the rest of a worker's life. A worker may be permanently disfigured, lose parts of the body or permanently lose function of parts or systems of the body. These workers are entitled to permanent impairment awards.

Examples of permanent impairments may include, but are not limited to, loss of limbs; permanent and measurable loss of movement in joints; loss of hearing; loss of sight or paralysis.

A permanent impairment award is not related to a worker's ability or inability to do activities such as sports or hobbies, or to do work. For this reason, as section 20 of the *Act* states, a permanent impairment award is separate from compensation for loss of earnings.

For example, if a web designer and a construction labourer both become paraplegic due to work-related injuries, they will both be assessed with the same level of permanent impairment. The jobs they did before they became paraplegic, and their ability to do those jobs after, do not affect the permanent impairment assessment or award. They may have different entitlement to loss of earnings though, depending on their ability to work and earn as a result of their injuries.

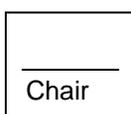
1. Timing of the Assessment

A permanent impairment assessment shall be done when the worker has reached maximum medical improvement and evidence of a permanent impairment exists. This means the worker has recovered to the best possible condition, has stabilized at that condition and is unlikely to significantly improve.

However, YWCHSB may do an interim assessment before the point of maximum medical improvement, if a work-related injury is irreversible. These types of injuries include, but are not limited to, loss of limbs or digits, paraplegia and quadriplegia.

2. Determining and Assessing a Permanent Impairment

YWCHSB decision-makers determine entitlement for permanent impairment awards on accepted claims for compensation. They do this by consulting a medical consultant who shall assess and determine if a permanent impairment exists, and shall determine the percentage or rating of the impairment.



The rating shall be based on the most current edition of the American Medical Association's Guide to Evaluation of Permanent Impairment (AMA Guides).

In cases where a worker has a permanent impairment, no rating shall be less than 1%. If a worker has multiple permanent impairments, the rating will be based on the effect on the whole person, using the combined values charts in the AMA Guides. No rating shall be more than 100%.

3. Death of an Injured Worker

If a worker dies as a result of a work-related injury before YWCHSB has assessed and rated the worker's permanent impairment, YWCHSB shall not make a permanent impairment award to the worker or the worker's dependents, in accordance with subsection 20(4) of the *Act*.

However, if a worker has had his or her permanent impairment assessed, and dies of non-work-related causes before the permanent impairment award is paid, YWCHSB shall pay the award to the worker's dependents.

4. Pre-existing Conditions

In some cases, the worker's pre-existing condition will never return to its pre-injury state. In the case of a permanent partial impairment, YWCHSB will determine what proportion of the permanent impairment can be attributed to the work-related injury and what portion can be attributed to the pre-existing condition or other cause. Permanent partial impairment awards will be paid only for the proportion of the permanent impairment that can be attributed to the work-related injury.

A proportioned permanent impairment award will be assessed according to this policy, and by determining:

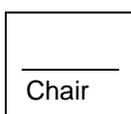
- a) The value of the total clinical impairment of the worker following the work-related injury,

Less

- b) The value of the total clinical impairment of the worker prior to the work-related injury (i.e. the clinical impairment value of the pre-existing condition). Permanent impairment will be assessed according to the AMA Guides. If the worker's pre-existing condition is not measurable, the YWCHSB medical consultant will estimate the degree of the pre-existing condition based on the evidence available.

YWCHSB will not proportion the permanent impairment award when the work-related injury and its immediate consequences are so severe that the permanent impairment would have resulted regardless of the pre-existing condition.

5. Calculations of Awards



A YWCHSB decision-maker will calculate the permanent impairment award in accordance with subsection 20(2) of the Act. He or she will multiply the percentage of permanent impairment by 125% of the maximum wage rate that was in effect for the year the injury occurred.

Examples:

1. *Anne severely injures her knee during a fall at work in 2008. Following all therapy and surgery, the medical consultant concludes Anne's injury has resulted in a 5% permanent impairment. The calculation is as follows:*

$$125\% \times \$74,100 \text{ (2008 maximum wage rate)} = \$92,625.00$$
$$5\% \text{ (percentage of permanent impairment)} \times \$92,625.00 = \$4,631.25$$

The permanent impairment award is **\$4,631.25**

2. *Susan falls from a ladder and breaks both elbows and both wrists in 2008. After multiple surgeries, the Medical Consultant determines the worker has limited function and permanent impairments in all four joints. To determine the percentage of permanent impairment, the Medical Consultant considers the overall impact on the whole person, based on the AMA Guides, rather than adding up the individual value of each impairment. In this case, the permanent impairment percentage is 25%. The calculation is as follows:*

$$125\% \times \$74,100 \text{ (2008 maximum wage rate)} = \$92,625.00$$
$$25\% \text{ (percentage of permanent impairment)} \times \$92,625.00 = \$23,156.25$$

The permanent impairment award is **\$23,156.25**

3. Reviews of Permanent Impairment Awards

YWCHSB may review a permanent impairment award no earlier than five years after the initial assessment. Subsequent reviews of the same permanent impairment may occur no earlier than five years after the most recent review.

However, if new medical evidence supports the conclusion that the permanent impairment has deteriorated substantially, YWCHSB may conduct a review of a permanent impairment award before the five-year period has elapsed.

Example:

Stan has a knee injury and eventually receives a permanent impairment award based on an impairment rating of 4%. Three years later, he needs to have joint replacement surgery on the knee. As this indicates a substantial deterioration of the worker's knee impairment and constitutes new evidence, YWCHSB may conduct a review of the permanent impairment award before the five year minimum review period has elapsed.

If a review shows that the rating or percentage of impairment has increased, YWCHSB will calculate the additional award in accordance with subsection 20(2) of the Act. This

review and calculation procedure shall apply to reviews of permanent impairment awards made since January 1, 1993. The calculation procedure is as follows:

YWCHSB determines the difference in the percentage or rating of the permanent impairment between the initial assessment and the review. The YWCHSB will multiply that difference in percentage by 125% of the maximum wage rate of the year in which the injury occurred.

Example:

Peter, a 45 year old worker, injures his back in 1993. He receives a permanent impairment award of \$4,000, based on a permanent impairment of 5%. His condition worsens. In 2008 the YWCHSB reviews his case and determines his impairment is now at 8%. His additional permanent impairment award is calculated as follows:

25% X \$50,000 (maximum wage rate in 1993) = \$62,500

8% (new impairment rating) - 5% (1993 impairment rating) = 3%

3% (difference in impairment ratings) X \$62,500 = \$1875.00

*The worker receives an additional permanent impairment award of **\$1875.00***

4. Lump Sum or Annuity

A worker may choose to receive his or her permanent impairment award as a single lump sum award or as an annuity. The exceptions are for smaller awards. As required by subsection 32(3) of the *Act*, an annuity for a permanent impairment award must be at least the minimum amount set by an Order of the Board of Directors.

ROLES AND RESPONSIBILITIES

YWCHSB

YWCHSB decision-makers are responsible for identifying a potential permanent impairment, for consulting the medical consultant to determine the existence and rating of a permanent impairment, for calculating permanent impairment awards and for documenting the calculations on the worker's claim file.

The medical consultant is responsible for determining the existence of a permanent impairment, for assessing and determining the percentage or rating of an injured worker's permanent impairment pursuant to the AMA Guides and for documenting that information on the worker's claim file.

Workers

Workers are responsible for seeking and co-operating fully in health care or treatment recommended by YWCHSB and for attending any medical or other evaluations required by YWCHSB.

APPLICATION

This policy applies to the Board of Directors, President/CEO and staff of the YWCHSB, to the Workers' Compensation Appeal Tribunal and to employers and workers covered by the *Act*.

EXCEPTIONAL CIRCUMSTANCES

When the circumstances of a case are such that this policy cannot be applied or doing so would bring an unfair or unintended result, YWCHSB will decide the case based on its individual merits and justice, in keeping with YWCHSB policy EN-02, "Merits and Justice of the Case". Such a decision will be for that case only and will not be precedent setting.

APPEALS

Decisions made by YWCHSB under this policy can be appealed directly in writing to the hearing officer of YWCHSB in accordance with subsection 53(1) of the *Act*. Notice of the appeal must be filed within 24 months of the date of the decision by YWCHSB, in accordance with section 52 of the *Act*.

ACT REFERENCES

Sections 3, 14, 20, 32, 52 and 53
Medical Professions Act

POLICY REFERENCES

EN-02, "Merits and Justice of the Case"

HISTORY

EN-12, "Permanent Impairment", effective July 1, 2008, revoked July 1, 2015
CL-46, "Permanent Impairment" (Page 3 Amended 94/03/16) – effective March 8, 1994, revoked July 1, 2008

APPENDIX A

MAXIMUM WAGE RATES 1993-2015

Year	Maximum. Wage Rate	125% of Maximum Wage Rate
1993	\$50,000	\$62,500
1994	\$50,000	\$62,500
1995	\$52,000	\$65,000
1996	\$51,400	\$64,250
1997	\$54,200	\$67,750
1998	\$54,200	\$67,750
1999	\$57,500	\$71,875
2000	\$60,000	\$75,000
2001	\$62,400	\$78,000
2002	\$65,100	\$81,375
2003	\$66,200	\$82,750
2004	\$65,800	\$82,250
2005	\$67,000	\$83,750
2006	\$69,500	\$86,875
2007	\$73,200	\$91,500
2008	\$74,100	\$92,625
2009	\$76,842	\$96,052
2010	\$77,610	\$97,012
2011	\$77,920	\$97,400
2012	\$80,024	\$100,030
2013	\$82,105	\$102,631
2014	\$83,501	\$104,376
2015	\$84,837	\$106,046