

 <p>Yukon Workers' Compensation Health and Safety Board</p>	<b>Part:</b>	<b>Employer Assessments</b>		
	<b>Board Approval:</b>	<i>Original signed by Chair</i>	<b>Effective Date:</b>	<b>January 1, 2015</b>
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	<b>Board Order:</b>		<b>Review Date:</b>	

## COVERAGE FOR DIRECTORS

### GENERAL INFORMATION

A director of an incorporated company is considered a worker under the *Workers' Compensation Act* (the *Act*). Employers must pay assessments for directors, and those directors are entitled to workers' compensation benefits if they sustain a work-related injury.

However, not all directors perform active work and not all directors' income is considered "earnings" under the *Act*. YWCHSB can deem some directors not to be workers.

### PURPOSE

This policy provides direction on:

- determining when a director is working and non-working;
- assessing employers who have directors; and
- verifying directors' earnings if they have work-related injuries and submit claims for compensation.

### DEFINITIONS

- 1. Active Incorporated Companies:** companies with workers or with directors who have not been exempted from being workers.
- 2. Affiliated Companies:** a company is an affiliate of another company if one of them is the subsidiary of the other, or each of them is controlled by the same person, as set out further in the provisions of section 2 of the *Business Corporations Act, R.S.Y. 2002, c-20*, as amended.
- 3. Assessment:** the amount employers are required to pay to YWCHSB in return for injury coverage for their workers and protection from civil action resulting from work related injuries. Assessments are based on the industry(s) in which the employer operates, as well as:

- a) the payroll of the employer; or
  - b) the amount of optional coverage purchased.
4. **Director:** a person elected or appointed by shareholders of an incorporated company to the board of the incorporated company.
  5. **Earnings:** defined by subsection 3(1) of the *Act* as including “salary, wages, commissions, tips, remuneration for overtime, piece work and contract work, bonuses and allowances, the cash equivalent of board and lodging, store certificates, credits, directors fees, indemnities and allowances paid to members of the Legislative Assembly, and any substitute for money but does not include any amount received for expenses incurred by the worker because of the worker’s employment.” Earnings do not include dividends.
  6. **Employer:** every person, firm, association, organization, or corporation having in their service one or more workers in an industry; inclusions are provided in the *Act* definition.
  7. **Employer Payroll Return (EPR):** the form on which employers annually report their industry, actual payroll for the prior year, estimate of their payroll for the current year, their sub-contractors and other information requested by YWCHSB under subsection 78(1) of the *Act*.
  8. **Maximum Assessable Earnings:** as defined by subsection 3(1) of the *Act*, the maximum earnings per worker on which employers are assessed. It is equivalent to the maximum wage rate - on which earnings loss benefits for injured workers are calculated.

## PREVENTION

Preventing workplace injuries is the responsibility of everyone in the workplace. YWCHSB encourages employers, workers (including directors), 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 (OHS Act)* and *Regulations*. All workplace parties are legally obligated to know and understand how this legislation applies to their work.

## POLICY STATEMENT

### 1. Working Directors

Working directors perform services for the incorporated company. The incorporated company may pay its directors in a variety of ways, including by wages, bonuses, directors’ fees and/or dividends (if the director is also a shareholder).

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Chair

**a) Assessments**

YWCHSB assesses employers for their working directors based on the directors' wages, bonuses, directors' fees and any other earnings. Dividends, if the director is also a shareholder, are not earnings under the *Act* and would not be included.

**b) Directors With No Earnings**

Subject to section 3 of this policy – “Directors of Multiple Affiliated Companies” – all active incorporated companies must pay YWCHSB at least the minimum assessment (under section 66(4) of the *Act*) even if their directors make no income considered earnings under the *Act*.

When a director has a work-related injury, and has no earnings from his or her role as a director, the director will generally receive no compensation for loss of earnings from his or her role as a director. However, he or she may receive compensation based on other earnings (under section 8 of YWCHSB policy EL-01, “Loss of Earnings Benefits”, and the *Act*). The director may also receive medical and other compensation benefits under the *Act*.

If a director is completely disabled from working, he or she may be eligible for minimum compensation under section 30 of the *Act* and YWCHSB policy EL-02, “Minimum Compensation.”

**c) Verifying Earnings When a Director has filed a Claim for Compensation**

When a director is entitled to compensation, YWCHSB determines the director's loss of earnings by applying YWCHSB policy EL-01. As with all workers, eligibility for loss of earnings benefits is capped at the maximum wage rate in the year of injury, in keeping with section 22 of the *Act*.

At any time, YWCHSB may further verify a director's earnings by examining other evidence of such earnings, including evidence from previous years. YWCHSB may review the EPR, conduct an audit (in keeping with YWCHSB policy EA-08, “Examination of Employer Records), examine contracts, tax information, financial statements and other evidence of the incorporated company in order to prove the earnings of a director.

YWCHSB may do this even after the director has been paid earnings-loss compensation. If there are discrepancies between the earnings the director reports and the earnings verified by YWCHSB, the director may be:

- entitled to additional loss of earnings; or
- required to return overpaid compensation, following YWCHSB policy EL-04, “Recovery of Overpaid Compensation.”

Compensation is for a director's medical costs and loss of earnings within limits set by the *Act* and policy; it is not related to maintaining viability of an incorporated company.

## 2. Non-working Directors

A non-working director may apply to YWCHSB for an exemption from coverage as a worker. To do so, he or she must satisfy YWCHSB that the director is not performing services for nor receiving earnings from the incorporated company, as required by YWCHSB policy EA-02, "Determining the Status of a Person: Employer, Worker, Sole Proprietor or Non-Working Director."

## 3. Directors of Multiple Affiliated Companies

If a director works for multiple affiliated companies that are in the same industry or rate group, YWCHSB will determine employer assessments based on that industry or rate group. If the director's total earnings from the affiliated companies exceed the maximum assessable earnings for the year, the YWCHSB will only assess the affiliated companies (employer(s) of the director) up to the maximum assessable earnings in total.

If a director works for multiple affiliated companies that are in different industries and rate groups, YWCHSB will apportion the director's earnings between the affiliated companies and assess the employers accordingly, based on the percentage of time the director does work for each affiliated company.

## 4. Return to Work

If a director has a work-related injury, it is important to safely return to work as soon as they have the functional ability to do so, according to YWCHSB's return to work and rehabilitation policies, RE-01 to RE-13. It is critical that directors, as workers, try as much as possible to continually reduce the financial and physical impacts of their disability, as required by section 14 of the *Act* and YWCHSB policy RE-03, "Mitigation of Loss."

## ROLES AND RESPONSIBILITIES

### YWCHSB

YWCHSB is responsible for communicating the requirements of the *Act* and policies to employers and workers, including directors. YWCHSB is responsible for adjudicating claims, providing return-to-work and rehabilitation assistance, collecting assessments and levying penalties when appropriate.

YWCHSB is also responsible for investigating workplace injuries and incidents, determining cause and issuing corrective orders or sanctions as appropriate under the *OHS Act*.

## Employers

Employers are responsible for registering with YWCHSB and for filing employer payroll returns on time and paying assessments on time. Employers are also responsible for notifying YWCHSB of any change in status. Employers are responsible for complying with the provisions of the *Act* and policies, including giving accurate and timely information to YWCHSB and providing for early and safe return to suitable employment for the director, even if it's not to the director's regular duties.

## Directors

Directors are responsible for providing YWCHSB with complete and accurate earnings information as soon as possible. Directors are also responsible for informing YWCHSB of any change in circumstances that affects the compensation claim. Directors are responsible for complying with the provisions of the *Act* and policies.

## APPLICATION

This policy applies to all workers, directors and employers as well as to the Board of Directors, President/CEO and staff of YWCHSB. It also applies to the Workers' Compensation Appeal Tribunal.

## 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, and apply YWCHSB policy EN-02, "Merits and Justice of the Case", if applicable. Such a decision will be for that case only and will not be precedent setting.

## APPEALS

A person can request a reconsideration of a decision on their status by submitting a written request for review to the Director of Assessments.

YWCHSB's assessment decisions made under this policy can be appealed in writing to the YWCHSB Board of Directors in accordance with subsection 85(1) of the *Act*. Notice of the appeal must be filed within 180 days of the date of the decision by YWCHSB, in accordance with subsection 85(2).

Decisions made by YWCHSB under this policy affecting workers' claims for compensation can be appealed 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 written decision by YWCHSB, in accordance with section 52 of the *Act*.

## **ACT REFERENCES**

Sections 3, 14, 22, 30, 52, 53, 66, 78 and 85

## **POLICY REFERENCES**

EA-02, "Determining the Status of a Person: Employer, Worker, Sole Proprietor or Non-working Director"

EA-08, "Examination of Employer Records"

EL-01, "Loss of Earnings Benefits"

EL-02, "Minimum Compensation"

EL-04, "Recovery of Overpaid Compensation"

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

RE-01 to RE-13, Return to Work policies

## **HISTORY**

NEW

EA-06, "Statement and Estimate of Earnings – Value of Service", effective July 1, 2008, revoked January 1, 2015