



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

Acts modernization external advisory group meeting 3 - occupational health and safety issues

Coast High Country Inn, Whitehorse

Thursday, November 14, 2019, 10:00 a.m. to 12:00 p.m.

Introduction

This is a summary of comments made by participants at the external advisory group session on November 14, 2019. For more information on the topics that were discussed [download](#) the occupational health and safety issues paper.

Method

Participants were divided into groups randomly and were asked to discuss acts modernization policy topics. Through group discussions that included Yukon Workers' Compensation Health and Safety Board (YWCHSB) staff, participants had their thoughts recorded on poster paper. The groups discussed three questions for each topic.

1. *What are the benefits to this approach?*
2. *What are the disadvantages/risks?*
3. *What are some other options to consider?*

The poster paper notes are reflected in this document.





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

Serious incidents and injuries

Proposal

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.

Benefits

- Guidelines are better than a prescriptive list but has its own challenges;
- This proposal would stay current longer than it would with a prescriptive list;
- Good language change;
- More clarity, multi sector focus;
- More open communication;
- More involvement of workplace parties;
- Better preparation;
- Makes it easier to train all parties, easier to build into curriculums for safety training;
- Easier to comply with;
- Would improve safety;
- More encompassing than focusing on mining only;
- Additional clarity;
- Increased flexibility moving forward;
- Clarity for employers means it is easier for employers to fulfill obligations (black and white requirements are helpful);
- Definition of injury/incident in legislation is too constricting currently;
- Regulations enable flexibility and the ability to stay current;
- Clarity regarding when and if injury reporting is necessary;
- Simplicity equals less penalties against employers; and
- What is written must take into account different workplaces (e.g. size of the workplace).

Risks and challenges

- There is a risk that some people might fail to exercise discretion with guidelines;
- More responsibility on the regulator;
- People may report less;
- Written report may be viewed as more work/red tape;
- Broad language could be an issue, need clarity – e.g. admitted to hospital vs. received healthcare from the hospital are two very different things;



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

- Not doing education and training would be a big problem;
- Having a regulation that contains additional information is additional work for employers;
- It would be additional work for YWCHCB safety officers to ensure employers are in compliance; and
- Being pro-active instead reactive equals additional work.

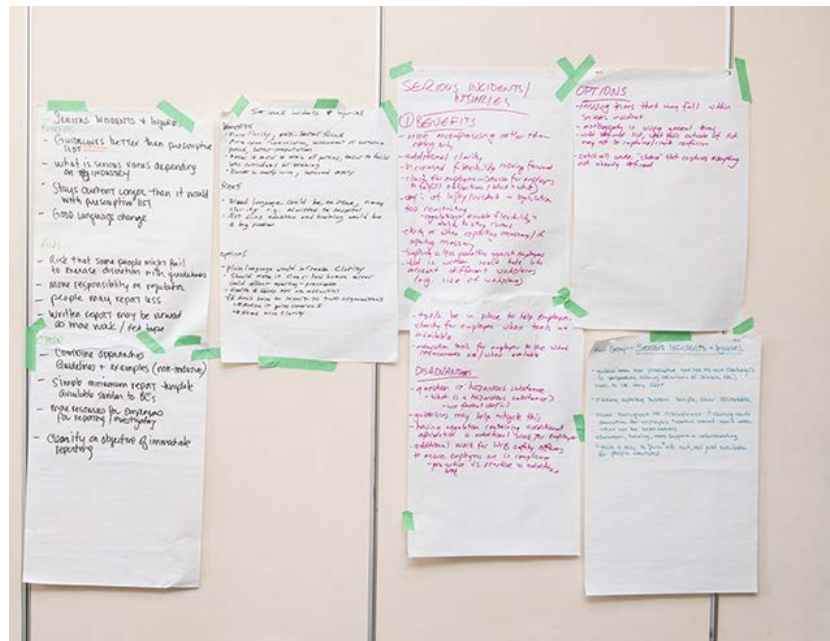
Other options to consider

- Need to make the reporting system simple, clear and accessible;
- Make it easy to “push” information out, not just available for people interested;
- What is serious varies depending on the industry;
- Could combine approaches with guidelines and examples (non-inclusive);
- Good idea to have a simple minimum report template available, similar to BC’s;
- Need clarity on objective of immediate reporting;
- Plain language would increase clarity;
- Should make it clear how human error could affect reporting – as soon as reasonably practicable would be useful language;
- Health and safety representatives are essential to make this process work;
- First Nations Governments have to report to two organizations currently;
- This makes the process onerous so increased clarity on reporting requirements is needed;
- Tools should be in place to help employers;
- Clarify for employers where tools are available;
- Educational tools for employers to see what requirements are/where available;
- What is a hazardous substance;
- Use the federal definition;
- Guidelines may help to mitigate this;
- Might be missing terms that may fall within serious incident;
- Ambiguity in using general terms;
- With a defined list, what falls outside of the list may not be captured/create confusion;
- Catch-all under “chance” that captures everything not already defined;
- Is there an opportunity to link psychological impacts to serious incidents;
- Written reports for serious incidents – why not make it mandatory to submit the report to YWCHSB;
- Is it reasonable to think a serious incident may cause significant psychological injury too; and



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

- A theme throughout all discussions was the training and education needs for employers and workers about: how it works, what are the expectations, education and training, more support in understanding.



Right to refuse unsafe work

Proposal

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.

Benefits

- Overall the proposed change is a good thing;
- This proposal has alignment with the intent of the internal responsibility system;
- More autonomy for workplaces to grow their internal responsibility system;
- Less abuse of the right of refusal when there might not be truly unsafe work;



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

- Less involvement of occupational health and safety (OHS) (may also be a disadvantage where unsafe work may not be reported);
- Raises awareness in workplaces of the right to refuse unsafe work;
- This approach enables the internal responsibility system;
- Gives employers more responsibility and ability to manage their own business;
- There is a potential for increased efficiency, building safety and hazard control capacity and new opportunities;
- Simple, straight forward and reflects what is already happening; and
- Simple up-front approach that addresses the hazard, rather than embarking on an all-or-nothing process.

Risks and challenges

- The perception of risk is different depending on the person and on the job;
- Some jobs are inherently unsafe or risky;
- More training is required, small employers as well – education piece costs money;
- There is the question of whether a worker and supervisor/employer may have difficulty resolving issues- need to be able to resolve;
- Need to make sure there is a work-plan and a follow-up regarding the hazards when a worker exercises this right;
- Won't always require a work-plan, but sometimes;
- The refusal threshold is set too high;
- The definition of “unsafe work” may result in a difference of opinion, requiring an adjudicator or arbitration in some circumstances;
- There is a potential for miscommunication between the worker and others; and
- The definition of unsafe work – bar is too high, message is that a small injury is okay as long as it's not serious.

Other options to consider

- Clarity on the process is required;
- Could YWCHSB develop a flowchart or template catered to the size of the workplace;
- A broader definition of “unsafe work” might help;
- Example in the discussion paper might be too narrow;
- Basing definition on deviation of usual work;
- Objective third party to assist with the determination might be necessary;
- Clarity on process when YWCHSB steps in is necessary;



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

- Potential for some new workers to not understand the process or their rights;
- Fault-free reporting for employers to OHS needs to continue;
- Question: does this proposal also address toxic workplaces or only physical incidents or dangers;
- If this does apply, perhaps make this clearer (physical and psychological);
- This would need to be communicated;
- Punitive discipline – is there an alternative;
- Any different ways to hold people accountable;
- An OHS screening form to determine if OHS does need to take a role;
- Explore different ways rather than only punitive actions;
- Accountability options need to be explored;
- Process template (can be printed off and put in safety manuals);
- Education piece needs to be maintained;
- Proactive vs. reactive;
- Templates need to be modifiable to meet different employer needs; and
- What about people who may experience mental health issues (not physical ones) in the workplace.





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

Prohibited reprisals

Proposal

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.

Benefits

- Faster and cheaper resolution adds to court efficiency;
- Increase in flexibility/stream-lined/ practical;
- Can treat each case uniquely;
- Customized and human involvement, more unbiased;
- Efficient, cost-effective and increased speed (investigations can be complex);
- Employee would receive resolution quicker with a more fair process;
- Liability removed from third party if employer can take responsibility;
- Ownership of issue in workplace by involved parties;
- More natural process and a fairer process – perception;
- Costs employers less money;
- Gives workers a better return-to-work outcome and places less burden on the worker;
- Better chance of reconciliation with a worker returning to employment;
- Consistent with other jurisdictions;
- More flexible approach;
- Less time it takes, the less fractured workplace relationships will be;
- May actually be able to shake hands with the other party after a resolution; and
- Faster and cheaper is better for both the employee and the employer.

Risks and challenges

- Selection of adjudicators is very important;
- Need independent adjudicators;
- The burden of proof may change;
- Arbitrators decisions could be challenged;



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

- The process for arbitration could also be complicated and no better than the current process;
- Assumption is that the new process would be faster, easier, etc. but need to make sure it is not actually worse;
- Who comprises the independent/third party body;
- Cost to employer and worker. Who pays for what;
- Unionized vs non-unionized worker costs;
- There needs to be opportunity for equal representation;
- Small employers and their workers need to have equal access to the third party;
- Depending on situation, need to ensure third party correct and has knowledge and skills to make decisions;
- Risk in smaller jurisdictions to find the “right” people;
- Can 3rd party complicate matters? Simple might be best;
- If there is a large decision body, decisions may not be quick. Very labour intensive;
- Yukon is a small jurisdiction – some worries about getting the right person for adjudication/mediation/etc.;
- Decisions handled by a body where decision should have been made by a court given severity;
- There needs to be clear structure depending on nature/how situations are addressed;
- Smaller employers might need smaller type of decision maker; and
- Collective agreement/arbitration/ombudsman.

Other options to consider

- Graduated approach potentially? If don't agree with an adjudicator's decision;
- Courts usually don't want to overturn an adjudicator's decision;
- Mediation could be an option, also if a disagreement occurs after an arbitrator's decision;
- Multiple channels for resolution, ultimate goal is a resolution – one option may be less stressful for the worker;
- Mediation may be beneficial early in the process;
- More/better education on process;
- Reverse onus – on the employer to prove no prohibited reprisal occurred;
- If employee goes through complaint process now the employee is responsible for proving the charge;



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

- In reverse onus the employer is responsible for proving it didn't happen;
- Clarity on parties involved, particularly in the case of union representation;
- Description of what goes where – what goes to court? What goes to admin body?;
- Provide options at every level;
- Need to consider escalation;
- Clear communication; does language of “prohibited reprisals” create confusion;
- Change title, e.g. “discriminatory action” etc.;
- Collecting historical/existing data for a trend analysis;
- Financial pot for employers and workers to access; and
- Cannot put barriers in place.

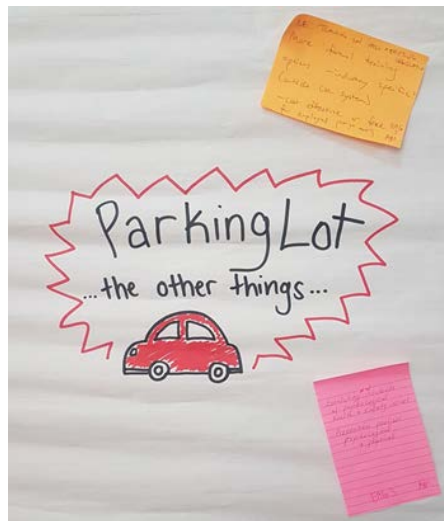




Modernization of the *Workers' Compensation Act and Occupational Health and Safety Act*

Parking Lot

When questions or statements arose throughout the meeting that were unrelated or were not covered by the topic under discussion, participants were encouraged to record thoughts on the “parking lot” poster paper. Below are those thoughts.



Escalating number of incidents of psychological health and safety issues.

More informal training options – industry specific? Cost effective or free for employers.