

 <p><b>Yukon Workers' Compensation Health and Safety Board</b></p>	<b>Part:</b>	<b>Employer Assessments</b>		
	<b>Board Approval:</b>	Original Signed	<b>Effective Date:</b>	July 1, 2017
	<b>Number:</b>	EA-15	<b>Last Revised:</b>	
	<b>Board Order:</b>	2008/20	<b>Review Date:</b>	

## **EMPLOYER PENALTIES FOR FAILURE TO PROVIDE TIMELY NOTICE OF A WORK-RELATED INJURY**

### **GENERAL INFORMATION**

The *Employer's Report of Injury/Illness* form provides the Yukon Workers' Compensation Health and Safety Board (YWCHSB) with important information needed to adjudicate and manage a claim efficiently and effectively. Section 10(1) of the *Workers' Compensation Act*, S.Y. 2008, c. 12 (the *Act*) requires that employers report any work-related injury, or the possibility of any work-related injury that comes to their attention within three days of receiving the information. The employer must report even if they are not sure the injury is work-related. Late reporting by employers causes delays in processing claims and interferes with the early and safe return to work process. It may also cause an injured worker financial hardship due to possible delays in receiving benefits.

Late reporting by employers could result in increased claims costs, which could lead to higher assessment premiums. Section 10(3) of the *Act* gives YWCHSB authority to levy a penalty against employers who fail to report work-related injuries within the time required. YWCHSB may also conduct an investigation and charge the costs of that investigation to the employer.

There are also injury reporting requirements for employers set out in the *Occupational Health and Safety Act* R.S.Y. 2002, c. 159 (the *OHS Act*). The employer may also be subject to investigation or enforcement actions taken under the *OHS Act*, which are separate and distinct from the financial penalties under the *Act* for failure to report injuries within the time required.

The *Occupational Health and Safety Regulations* (O.I.C. 2012/73) Part 18, "Minimum First Aid Requirements", set out a requirement for employers to have an internal reporting and recording system for all injuries that happen in the workplace. This information must be made available to a Safety Officer on inspection.

## PURPOSE

This policy provides information to employers about:

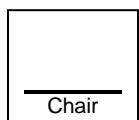
- a) their responsibility to have a process in place that facilitates reporting and recording of injuries in the workplace;
- b) their responsibility to report any work-related injury or the possibility of any work-related injury to YWCHSB within three days of receiving information about it;
- c) how reporting on time helps YWCHSB to provide workers with timely adjudication and facilitates early and safe return to work.

## DEFINITIONS

1. **Work-related:** as defined in the *Act*: “in reference to an injury of a worker, work-related means the injury arises out of and in the course of employment”.
  - a) *Arising out of employment* means that there is a causal connection between the conditions of the work required to be performed and the resulting injury.
  - b) *In the course of employment* means an injury is linked to a worker’s employment in terms of time, place and activity consistent with the obligations and expectations of that employment.
2. **Injury:** as defined in the *Act*:
  - a) 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 willful 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.

## PREVENTION

All workplace parties are responsible for preventing injuries 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 and employers must co-operate with YWCHSB to return the worker to safe, suitable and available work as soon as functionally possible. This is proven to benefit injured workers because it helps prevent disability, and can ultimately lead to lower assessment rates.



YWCHSB is also responsible for administering and enforcing the *OHS Act* and *Regulations*. All workplace parties are legally obligated to know how this legislation applies to their work.

## **POLICY STATEMENT**

### **1. Notice of Injury**

Employers are required to give YWCHSB written notice of a worker's work-related injury or possibility of a work-related injury that comes to the employer's attention within three days, beginning when the employer receives the information. The employer may receive information about a work-related injury, or possibility of a work-related injury from sources such as:

- a) the injured worker;
- b) a supervisor, co-worker or witness;
- c) YWCHSB; or
- d) a physician or other health care provider.

The *Employer's Report of Injury/Illness* form can be completed on-line or submitted by fax, mail, email, or in person.

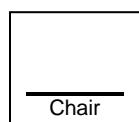
### **2. Possibility of a Work-related Injury**

In many cases, there is a clear cause-and-effect relationship between the work and the injury, and reporting the injury is straight forward. In some cases, it is not obvious whether there is an injury, or whether an injury is work-related.

In the following examples, it is not immediately obvious whether the worker has an injury, or whether the worker's injury is work-related. Since there is a possibility that it is, the employer must report it to YWCHSB:

- *On Monday morning, Steve calls in sick. On Tuesday, he comes in to work with a doctor's note that says Steve hurt his back at work on the prior Friday afternoon. Nobody saw Steve get hurt and he didn't say anything at the time, but he says his back injury happened at work.*
- *Samantha often gets itchy, watery eyes and hives on her skin. She submits a Worker's Report of Injury/Illness saying she is allergic to something at work.*
- *Leonard and Darryl are unloading construction materials from the pick-up truck in preparation for the decking job they're about to start. Darryl faints and is rushed to the hospital. He may have had a heart attack.*

YWCHSB decision-makers are trained to investigate each claim for compensation. By weighing evidence provided by the employer, the worker, health care providers and



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other sources, YWCHSB determines whether an injury is work-related and whether a worker is eligible to receive compensation benefits. To facilitate timely decision-making, it is important for employers to report within the time required, even if they are not sure an injury is work-related.

### **3. Penalties**

#### **a) Late Reporting Penalty**

If an employer fails to report a work-related injury or the possibility of a work-related injury within three days of receiving the information, YWCHSB may levy a penalty against that employer. The collection of the debt will be enforced the same way collection of an assessment payment is enforced. The amount of the penalty is established by Order of the Board of Directors.<sup>1</sup> Even if the worker does not wish to submit a claim for compensation, the employer is required to submit a report under the *Act*.

#### **b) Costs of an Investigation**

If an employer fails to report a work-related injury or possibility of a work-related injury to YWCHSB within three days of receiving the information, YWCHSB may investigate and charge the costs of the investigation to the employer. The collection of the debt will be enforced the same way collection of an assessment payment is enforced.

YWCHSB may investigate whether:

- i. the employer has a reporting process in place;
- ii. injury reporting is encouraged in the workplace;
- iii. supervisors are trained in reporting requirements;
- iv. workplace parties are knowledgeable about their responsibilities for reporting and recording injuries;

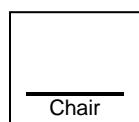
or any other associated or related issues, as determined by the investigating officer.

## **APPLICATION**

This policy applies to workers and employers covered by the *Act*, YWCHSB staff, and the Board of Directors.

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<sup>1</sup> Refer to current Board Orders for details.



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## **EXCEPTIONAL CIRCUMSTANCES**

In situations where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or an unintended result, YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB policy EN-02, “Merits and Justice of the Case.” Such a decision will be considered for that specific case only and will not be precedent setting.

## **APPEALS**

An employer may appeal an assessment decision made by YWCHSB 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 YWCHSB’s decision, in accordance with subsection 85(2).

## **ACT REFERENCES**

*Workers’ Compensation Act*, S.Y. 2008, c. 12, sections 10 and 85

*Occupational Health and Safety Act*, R.S.Y. 2002, c. 159

*Occupational Health and Safety Regulations*, O.I.C. 2006/178 (as amended by 2012/73), Part 18, “Minimum First Aid Requirements”

## **POLICY REFERENCES**

EN-02, “Merits and Justice of the Case”

## **HISTORY**

EN-03, “Employer Penalty for Failure to Provide Timely Notice of a Work-related Injury”, effective July 1, 2008; revoked July 1, 2017

CL-36, “Employer Penalty for Failure to Provide Notice of a Work-related Disability”, effective January 2, 1993, amended April 5, 2005, revoked July 1, 2008

