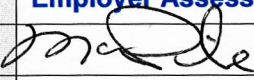
 <b>Yukon Workers' Compensation Health and Safety Board</b>	<b>Part:</b>	<b>Employer Assessments</b>		
	<b>Board Approval:</b>		<b>Effective Date:</b>	<b>July 1, 2014</b>
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	<b>Board Order:</b>		<b>Review Date:</b>	

## COVERAGE FOR WORKERS OUTSIDE YUKON

### GENERAL INFORMATION

The *Yukon Workers' Compensation Act S.Y. 2008* (the *Act*) allows coverage to be extended under certain circumstances to Yukon workers employed outside Yukon, either within or outside Canada.

Yukon workers may be eligible for workers' compensation coverage when they work outside Yukon - either in another Canadian jurisdiction or outside Canada - under the workers' compensation legislation of those jurisdictions. Employers must follow the legislation in the jurisdiction where they are working, including registering and paying assessments as required.

There are variations among workers' compensation legislation across Canada regarding which industries are covered, so it is important that employers are aware of this before their workers leave Yukon. If coverage is not available to a worker in the jurisdiction where they are being sent to work, it may be available from Yukon Workers' Compensation Health and Safety Board (YWCHSB).

### PURPOSE

This policy provides direction to YWCHSB staff and clarity to workers and employers regarding the provision of coverage to Yukon workers employed outside Yukon, either within or outside Canada, while also ensuring that Yukon employers and the compensation fund are limited in the additional liability they may be exposed to.

### DEFINITIONS

1. **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.
2. **Worker:** a person who performs services for an employer under a contract of service or apprenticeship. Certain persons are excluded from being a worker under the *Act* definition, and others may be designated as workers under the *Act* subsection 3(1) and sections 5 and 6.

3. **Compensation:** any amount payable or services provided under the *Act* in respect of an injured worker.
4. **Yukon Resident:** someone who holds a valid Yukon Health Care Card and maintains a Yukon residence.
5. **Usually Employed in Yukon:** a worker who has been working in Yukon for at least the same length of time as the proposed time working outside Yukon for their Yukon employer, whose employer continues operations in Yukon.
6. **Continuation of Employment** means the worker is:
  - employed by the same employer inside and outside Yukon;
  - performing similar tasks, using familiar equipment and processes; and
  - working in an environment comparable to the Yukon in terms of:
    - occupational health and safety rules and enforcement;
    - environmental conditions;
    - civil order and security; and
    - access to comparable health care services.

## PREVENTION

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 (OHS Act)* and *Regulations*. All workplace parties are legally obligated to know and understand how this legislation applies to their work.

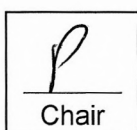
## POLICY STATEMENT

### 1. Qualifying for Coverage: Outside Canada and Within Canada

Any employer who wants its workers covered to perform work outside Canada must apply for coverage before their departure (see section 3 of this policy). Only workers who meet the criteria described in Section 7(2) of the *Act* qualify for compensation coverage outside Yukon:

*7(2) If a work-related injury is caused while a worker is employed outside of the Yukon, compensation is payable only if:*

- (a) the worker was outside of the Yukon in connection with that employment for less than 12 consecutive months immediately before the cause of the work-related injury arising;*





- (b) *the worker is either a resident of the Yukon or is usually employed in the Yukon;*
- (c) *the workers' employment outside of the Yukon is a continuation of the employment by the same employer in the Yukon; and*
- (d) *where a worker is working outside of Canada, the board has received written confirmation that the worker is in compliance with paragraphs 7(2)(a) to (c).*

If a worker is injured outside Yukon but within Canada, the worker and employer must be able to demonstrate the worker meets the criteria above to qualify for compensation coverage in Yukon.

For the purposes of this policy, under section 7(2)(a), the 12-month period starts when the worker leaves Yukon for employment elsewhere with their Yukon employer. Brief interruptions, such as vacations or short periods in Yukon, are included in the calculation of the employment period.

## **2. Coverage for Workers Outside Yukon but Within Canada**

Any Yukon employer planning to send workers outside Yukon but still within Canada must ensure they will be in compliance with the workers' compensation legislation and policies in the jurisdiction where their workers will be working. For example, they need to know how long can they work in the other jurisdiction before they have to register and pay assessments.

Not all industries are covered in all jurisdictions. If an employer plans to send workers to a jurisdiction where their industry is not covered, they are strongly advised to obtain YWCHSB's written confirmation of coverage before any workers leave Yukon.


If an employer fails to comply with another jurisdictions' legislation, they could face penalties and put their workers at risk of not having compensation coverage.

## **3. Coverage for Workers Outside Canada**

Any Yukon employer planning to send workers outside Canada, who wants extended coverage from YWCHSB, must apply to YWCHSB for extended coverage. This application must be made prior to the date any Yukon worker is expected to depart Yukon to start work outside Canada.

The application from the employer can be obtained from YWCHSB and shall include the following:

- a. the names of workers who need coverage;
- b. the expected dates the workers will leave and return to Yukon; and
- c. written confirmation that all the requirements of section 7(2) of the *Act* and this policy have been met.

  
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YWCHSB recommends that employers apply for extended coverage as soon as they start planning to send workers outside Canada, to ensure there is adequate time to consider the application and issue a decision to the employer in writing. Depending on the complexity of the application, YWCHSB may require as few as five or as many as 30 days to process the application.

*Example of a simple application: Three workers are traveling to Alaska for four days to attend a trade show.*

*Example of a complex application: A full road-construction crew is traveling to Chile for an eight-month contract.*

YWCHSB will assess each application for compliance with requirements a-c above, and investigate the conditions in the foreign jurisdiction. Examples of cases where coverage will not be extended include, but are not limited to:

- a) the employer has not provided all the required information;
- b) workers requiring coverage leave Canada before the employer receives confirmation of coverage;
- c) a worker or workers do not meet the requirements of section 7(2) of the *Act*;
- d) there is not adequate time to investigate the conditions in the foreign jurisdiction before workers are expected to leave Canada; or
- e) the conditions in the foreign jurisdiction are not comparable to conditions in Yukon (see Definitions: "Continuation of Employment").

Obtaining workers' compensation coverage for workers outside Canada may not protect the employer from lawsuits. Workers injured while working outside Canada may be able to sue their employer in the jurisdiction where the injury occurred. Employers should obtain adequate private insurance coverage for this possibility prior to the worker(s) leaving Yukon.

#### **4. Coverage Outside Yukon Beyond 12 Months:**

##### **Outside Canada and Within Canada**

This applies to workers working outside Canada or any other Canadian province or territory outside Yukon. It is expected that work outside Canada or in another Canadian jurisdiction would be temporary and completed within 12 months, and that workers would return to Yukon within that timeframe.

The *Act* allows coverage to be in place for up to 12 months outside Yukon with the possibility of an extension. Employers wanting to extend coverage beyond 12 months must apply to YWCHSB for an extension if their workers are going to continue to work outside Yukon longer than 12 months. Extensions will only be granted under exceptional circumstances.



## **5. Short-term Employment Outside Yukon**

Some jurisdictions require employers to register with them starting the day of arrival, where others have grace periods. Employers sending workers outside Yukon should check their coverage requirements in the other jurisdiction, even if the workers will be gone a short period of time.

Some workers cross borders regularly in the course of their employment (for example, emergency workers on a rescue mission). In cases where the employer is not able to apply for coverage in advance of the worker(s) leaving Yukon, the exceptional circumstances section of this policy will apply in determining whether coverage will be extended.

## **6. When a Workplace Injury Occurs Outside Yukon**

Appropriate and timely health care assistance is critical to mitigating the impact of a workplace injury (including the development of subsequent conditions), and in promoting a safe and timely return to work. In some jurisdictions outside Canada, there may be challenges in accessing necessary, timely and cost efficient health care services for injured workers.

Successful case management, mitigation of loss and early and safe return to work may not be possible if there are delays in reporting an injury. Therefore, an effective workplace health and safety program must include a reliable process for promptly reporting injuries. Employers are expected to ensure such systems are in place.

Under Section 7(4) of the *Act*, a worker or the workers' dependent must notify YWCHSB within 30 days of the date the workers' work-related injury arose if they intend to file a claim for compensation with YWCHSB. If notification is not received within 30 days of the work-related injury, section 7(6) is applied and the compensation claim is considered to be filed in the jurisdiction where the injury arose, whether or not the worker has done so.

The 30-day requirement to report a work related injury and claim compensation from YWCHSB will be waived only under exceptional circumstances. There must be evidence that the worker, a representative for the worker or a workers' dependant was unable to report to YWCHSB within the 30-day limit.

## **ROLES AND RESPONSIBILITIES**

### **YWCHSB**

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



## **The Employer**

The employer is responsible for registering with YWCHSB, for filing employer payroll returns on time and for paying assessments on time. The employer is also responsible for notifying YWCHSB of any change in status, and complying with the provisions of the *Act* and policies.

It is the employer's responsibility to understand what coverage they have when working outside Yukon. Employers sending Yukon workers to jurisdictions outside Canada face additional risks and liabilities that are not present when working in Yukon. It is the employer's responsibility to ensure the health and safety of their workers and that they are in compliance with any workers' compensation and occupational health and safety legislation, regulations and policies in the other jurisdiction. The employer is also responsible for applying for extended coverage as soon as they plan to send workers outside Canada, and ensure no worker departs before they receive confirmation that YWCHSB will extend coverage.

It is also the employer's responsibility to ensure their workers know what coverage is in place, and reporting requirements and processes for injuries that occur outside Yukon.

Yukon legislation that protects employers and workers from legal action cannot be enforced outside Canada. Employers must take steps to ensure they have appropriate private insurance in place to deal with issues not covered by YWCHSB while they are working outside Yukon.

## **The Worker**

The worker is responsible for providing YWCHSB with complete and accurate earnings information as soon as possible once the claim for compensation has been accepted. The worker is also responsible for informing YWCHSB of any change in circumstances that affects the claim for compensation. The worker is responsible for complying with the provisions of the *Act* and policies.

## **APPLICATION**

This policy applies to employers that are subject to assessments under Section 11 and 12 of the *Act*, the Board of Directors, President/CEO and staff of YWCHSB. It also applies to the Yukon Workers' Compensation Appeal Tribunal.

## **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 & Justice of the Case." Such a decision will be considered for that specific case only and will not be precedent setting.





## **APPEALS**

An employer can request a reconsideration of an assessment decision made under this policy 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, 5, 6, 7, 11, 12, 52, 53, and 85

## **POLICY REFERENCES**

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

## **HISTORY**

**New**

