



YUKON WORKERS'
COMPENSATION
HEALTH AND
SAFETY BOARD

SUBJECT: ASSESSMENTS

POLICY NO.:AS-18-01

BOARD APPROVAL:

APPROVAL DATE: May 16, 2006

BOARD ORDER NO.:

EFFECTIVE DATE: January 1, 2007

POLICY STATEMENT

POLICY: **OPTIONAL COVERAGE FOR CASUAL EMPLOYEES (THOSE WORKING OUTSIDE THE EMPLOYER'S NORMAL INDUSTRY), OUTWORKERS, PERSONS ACTING IN A RELIGIOUS FUNCTION, AND VOLUNTEERS**

Application

This policy applies to the Yukon Workers' Compensation Health and Safety Board ('the board'); an employer that applies for optional coverage; and a volunteer, a casual employee, an outworker, or a person acting in a religious function who is deemed a 'worker' under subsection 4(1) of the *Workers' Compensation Act*, R.S.Y. 2002 ('the Act'). This policy does not apply to volunteers designated as workers under section 5 of the Act.

Section Reference

Subsection 4(1) provides that despite any other provision of the Act, the board may, upon receiving an application from an employer, and subject to any conditions that it may establish, deem the following persons to be workers of that employer:

- (a) a person employed on a casual basis, otherwise than for the purposes of the employer's industry;
- (b) an outworker;
- (c) a person during any time the person is acting in a religious function as a duly ordained or appointed cleric, a member of a religious order, or as a lay reader; or
- (d) a volunteer.

Subsection 36(1) of the Act provides that a loss of earnings benefits will be paid in an amount of 75 per cent (75%) of the worker's loss of earnings

from all sources of earnings as authorized under the Act and defined in this policy.

Subsection 38(1)(a) of the Act provides that if a person is a volunteer deemed to be a worker and suffers a work-related disability while acting in that capacity, the worker's average weekly earnings shall be the greater of either their average weekly earnings or one-half of the maximum wage rate in the year the disability arose, unless otherwise prescribed by regulation.

Subsection 76(6) of the Act provides that when a person is deemed to be a worker, the board may deem an amount to be the earnings of that worker. This section may apply to volunteers, as detailed in the policy.

Objective

The objective of this policy is to establish the conditions of optional coverage that will be in effect for employers and the persons deemed as their workers under this policy.

General Information

The Act may be extended to provide the protection and benefits of the workers' compensation system for certain persons who are not automatically workers under the Act. This is done upon the board's acceptance of an employer's application for optional coverage.

Once granted, optional coverage is then extended:

- (i) to the employer and to the worker for immunity from civil suits resulting from workplace disabilities; and
- (ii) to the worker for the comprehensive benefits provided by the workers' compensation system as established by the Act and relevant policies.

Policy Statement

A. Definitions

(a) Actual Proven Earnings

Actual proven earnings are earnings that have been substantiated through the provision of evidence that is acceptable to the board.

(b) Average Weekly Earnings

Average weekly earnings are earnings that shall be calculated based on any sources of earnings over any period of time that the board

considers fair and just, up to the maximum wage rate established for the year.

(c) Casual Employee Other than for the Purposes of the Employer's Industry

A person employed on a casual basis, for *purposes other than the employer's industry*.

Policy GC-08, "Definition of a Worker" defines 'casual basis' as meaning employment that is irregular, unpredictable, sporadic and brief in nature.

It is critical to note that casual workers employed *for the purposes of the employer's industry* are automatically considered workers under the Act. Employers must pay assessment premiums on their earnings. Optional coverage is not required, and this policy does not apply.

(d) Deemed Earnings

Deemed earnings are the amount of earnings that the board has determined to be a worker's earnings, in lieu of actual earnings. Calculation of loss of earnings benefits will apply the deemed earnings amount as annual earnings.

(e) Employer

An employer includes a person or entity making application under this policy to have a person deemed to be their worker under subsection 117(1) of the Act.

(f) Maximum Wage Rate

The maximum wage rate set for the year in which the optional coverage is purchased.

(g) Optional Coverage

Optional coverage is available to individuals who are not automatically covered by the Act. The board deems, upon approval of an application for optional coverage, an 'employer' and a 'worker' for the purposes of extending the protection and benefits of the Act to these persons.

- (h) Outworker
An outworker is a person to whom articles or materials are given to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted at their own home or at other premises not under the control or management of the person who gave the person the articles or materials.
- (i) Volunteer
A volunteer is a person who does volunteer work for which the person receives no earnings or only nominal earnings.
- (j) Persons Acting in a Religious Function
A person acting in a religious function is a duly ordained or appointed cleric, a member of a religious order or a lay reader.
- (k) Worker
Worker includes a person deemed by the board to be a worker.

For the purposes of this policy, this includes persons under section 4(1) of the Act:

- (a) a person employed on a casual basis, otherwise than for the purposes of the employer's industry;
- (b) an outworker;
- (c) a person during any time the person is acting in a religious function as a duly ordained or appointed cleric, a member of a religious order, or as a lay reader; or
- (d) a volunteer.

B. Application Requirements

The application for optional coverage must be made by the employer in writing and signed on the prescribed application form in accordance with the conditions in place at the time.

The employer must have written consent of the individual being covered and this consent must be provided to the board at the time of application.

The applicant will be informed of the conditions of their coverage at the time of purchase. A copy of the policy will be provided to the employer and worker(s).

C. Classifications of Deemed Workers

Under this policy, there are two group classifications of deemed workers. Conditions of the sale of optional coverage and adjudication of claims will be established for each classification.

Type A Worker Classification

This applies to persons who are defined under the Act as a person employed on a casual basis, other than for the purposes of the employer's industry; an outworker; or a person during any time the person is acting in a religious function as a duly ordained or appointed cleric, a member of a religious order, or as a lay reader.

Type B Worker Classification

This applies to persons who are defined under the Act as a volunteer.

Policy Provisions for Type A Worker Classification:

Minimum Assessment and Coverage Amount

An employer may purchase optional coverage for a worker, up to the maximum wage rate for the year. The minimum assessment fee applies to all purchases of optional coverage.

Optional coverage should closely reflect the average weekly earnings of the worker, as loss of earnings benefits will be calculated on the lesser of actual proven earnings or the policy coverage amount elected.

Loss of Earnings Benefits

In the case of a work-related disability resulting in a time loss claim, the board must confirm:

- (i) that optional coverage was purchased;
- (ii) the level of coverage; and
- (iii) that the work-related disability occurred during the period that optional coverage was in effect.

The Type A worker is entitled to compensation in an amount equal to seventy five percent (75%) of his or her gross loss of earnings from all employment covered by the Act, up to the maximum wage rate for the year, or the optional coverage amount elected, whichever is less.

Policy CL-35, "Loss of Earnings Benefits" shall apply in the calculation of loss of earnings benefits for regular employment earnings, and minimum compensation, if applicable. The policy coverage amount elected will not

preclude the inclusion of other earnings from other employment source(s) that are being assessed workers' compensation premiums.

Where a portion of the earnings includes that received from a sole-proprietorship or partnership, the determination of earnings as defined in policy AS-18-02, "Optional Coverage for Sole Proprietors, Partners and Unincorporated Employers" will be applied.

Assessment premiums for coverage elected which is greater than the actual earnings proven at the time of a work-related disability is not refundable.

Policy Provisions Type B Person Classification:

Minimum Assessment and Coverage Amount

The minimum amount of coverage that may be purchased for persons under this classification is $\frac{1}{2}$ (one-half) the maximum wage rate established for the year of coverage.

Loss of Earnings Benefits

In the case of a work-related disability resulting in a time loss claim, the board shall confirm:

- (i) that optional coverage was purchased and is in effect;
- (ii) the level of coverage; and
- (iii) that the work-related disability occurred during the period that optional coverage was in effect.

Workers' earnings under this policy classification will be deemed to be either one-half ($\frac{1}{2}$) the maximum wage rate, or actual proven earnings, whichever is greater.

Loss of earnings benefits will be paid based on seventy-five (75)% of the gross deemed earnings. In cases where the actual proven earnings is greater than one-half ($\frac{1}{2}$) the maximum wage rate, the determination and calculation of loss of earnings benefits will be in accordance with Policy CL-35, "Loss of Earnings Benefits".

D. General Conditions For Optional Overage Conditions of Coverage

Maintaining valid coverage is subject to the following conditions:

- (i) submission of an appropriate form (e.g. application or renewal form) that is legible, signed and dated;

- (ii) compliance with the conditions established by the board for optional coverage;
- (iii) provision of all the information required to administer this policy;
- (iv) good standing of the account;
- (v) prompt advisement to the board of any changes that may affect coverage; and
- (vi) compliance with the Act.

If an application for optional coverage is not accepted, the employer will be advised and provided with the reasons as to why coverage cannot be extended.

It is the responsibility of the employer to ensure that the person(s) covered by optional coverage are aware of the conditions of coverage along with any changes to the coverage extended to him or her.

Coverage Period

The coverage period, its expiration date and policy renewal requirements will form a part of the conditions of the policy sold to the employer. The coverage cannot exceed a period of twelve (12) months.

E. Payment of Assessment Premiums

The board may require the employer to pay in advance, all or part of the optional coverage assessment premiums payable under section 65 of the Act.

Prepayment will be required in cases including, but not limited to:

- i) newly registered employers who have been in operation in the Yukon for less than one season;
- ii) employers that request a letter of clearance upon registration; or
- iii) employers whose coverage has been cancelled and have requested re-instatement. The employer may be required to pay a portion or full assessment premiums up front.

For employers who have had an account established with the board for a period longer than one season, a periodic payment schedule may be worked out.

F. Cancellation of Optional Coverage

Cancellation of optional coverage shall occur when an employer ceases operations, a person ceases to be a 'worker', or the optional coverage period expires, whichever is earlier.

To cancel optional coverage before the end of the coverage period, the employer must advise the board in writing. All cancellations are subject to the minimum assessment fee and are effective the date cancellation is requested or is received by the board, whichever is later.

When optional coverage is cancelled, the cancellation will be confirmed to the employer and worker in writing.

When a person covered by optional coverage is receiving compensation, the board does not automatically cancel the optional coverage. It is the employer's responsibility to notify the board if cancellation of coverage is desired.

Cancellations cannot be pre-dated nor will there be a refund issued when a worker is in receipt of compensation. All cancellations are subject to the minimum assessment premium rate established by board order.

G. Revocation of Coverage

Optional coverage for a person deemed a worker may be revoked by the board. Circumstances of revocation may include, but are not limited to when:

- i) an employer fails to pay the assessment premiums;
- ii) an employer fails to provide information required by the board; or
- iii) an employer's account is not in good standing.

When optional coverage is revoked by the board, the employer will be notified when practicable. The board will take reasonable steps to locate the employer in order to communicate the revocation. The worker will be notified in every instance.

There will be no refund issued when a person is in receipt of compensation. All cancellations are subject to the minimum assessment premium rate established by board order.

H. Change in Status

After the approval of an application for optional coverage, a deemed 'worker' may have a change in status. If an individual is no longer eligible for optional coverage because they are no longer a 'worker' of the employer who made the application, optional coverage is cancelled from the date of the status change.

It is the responsibility of the employer to notify the board of any change in status. Assessment refunds will be subject to the minimum assessment fee and based on the date of notification received by the board.

When employing individuals who are automatically defined as workers under the Act (not those individuals eligible for optional coverage), coverage is compulsory under the Act. The employer must notify the board with a statement and estimate of earnings within 10 days of hiring a worker under subsections 76(1) and 78 of the Act.

I. Right of Action

Individuals with optional coverage lose certain rights of action. Those considering optional coverage may wish to consult a lawyer to evaluate whether optional coverage will benefit them.

References

Policy AS-20, "Payments of Assessments"
Policy CL-35, "Loss of Earnings Benefits"
Policy CL-40, "Disability"
Policy CL-42, "Arising Out of and in the Course of Employment"
Policy GC-08, "Definition of a Worker"
Minimum Compensation Board Order

History

1. Policy Statement Optional Coverage, effective October 1st, 1995.
2. Policy Statement Optional Coverage, effective August 29, 1995.
3. Policy Statement Optional Coverage, effective January 2, 1993.