



YUKON WORKERS'
COMPENSATION
HEALTH AND
SAFETY BOARD

SUBJECT: ASSESSMENTS

POLICY NO.:AS-18-02

BOARD APPROVAL:

APPROVAL DATE: May 16, 2006

BOARD ORDER NO.:

EFFECTIVE DATE: January 1, 2007

POLICY STATEMENT

POLICY: **OPTIONAL COVERAGE FOR SOLE PROPRIETORS,
PARTNERS OR EMPLOYERS**

Application

This policy applies to the Yukon Workers' Compensation Health and Safety Board ('the board') and a sole proprietor, partner or employer as defined under the *Workers' Compensation Act*, R.S.Y. 2002 ('the Act') who makes application to be deemed their own employer and worker under subsection 4(2) and 117(2) of the Act.

Section Reference

Subsection 4(2) of the Act provides the board the authority to deem a sole proprietor, partner or employer to be their own 'employer' and 'worker'. Application for optional coverage is made by the sole proprietor, partner or employer, and despite any other provisions in the Act, is subject to any conditions established by the board.

Subsection 36(1) of the Act provides that loss of earnings benefits will be paid in an amount equal to 75 per cent (75%) of the worker's gross loss of earnings from all sources as authorized under the Act and defined in this policy.

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.

Subsection 117(1) of the Act provides the board the authority to deem a person to be a worker and an employer.

Objective

The objective of this policy is to establish the conditions of extending optional coverage to a sole proprietor, partner or an employer under the Act who is not defined to also be a worker under the Act (e.g. Directors of incorporated companies).

General Information

The Act can be extended to provide the protection and benefits of the workers' compensation system to a sole proprietor, partner or employer. This is done upon the board's acceptance of a sole proprietor, partner or employer's application for optional coverage.

Once granted, optional coverage provides the individual holding the policy immunity from civil suits resulting from workplace disabilities and provides 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) **Deemed Earnings**

Deemed earnings are the amount of gross earnings the board has determined to be a sole proprietor, partner or employer's earnings as per the definition of earnings in the Act and the provisions of determining earnings in this policy. Calculation of loss of earnings benefits will be made based on this amount.

(d) **Employer**

An employer means every person, firm, association, organization or corporation that has one or more workers in their employ and includes:

- (i) A sole proprietor deemed by the board to be an employer (e.g. purchases optional coverage);

- (ii) Any person deemed by the Act to be an employer; and
 - (iii) An un-incorporated employer.
- (e) Maximum Wage Rate
The maximum wage rate set the year in which the optional coverage is purchased.
- (f) 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.
- (g) Sole Proprietor or Partner
A sole proprietor means a self-employed person (not incorporated), including a partner in a partnership, who carries on or engages in any industry and does not employ any workers in connection with that industry as per subsection 117(1) of the Act.
- (h) Worker
Worker includes a sole proprietor, partner or employer deemed by the board to be a worker as per subsection 117(1) of the Act.

B. Application Requirements

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

Applicants will be informed of the conditions of their coverage at the time of purchase.

C. Minimum Assessment and Coverage Amount

A sole proprietor, partner or employer may purchase optional coverage up to the maximum wage rate for the year. The minimum assessment fee that applies to all purchases of optional coverage is set by board order.

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

When the individual has operated for less than one year and has no history of earnings, the assessment and coverage may be based on the experience of a similar business or occupation.

D. Compensation Benefits

Once deemed a worker, a sole proprietor, partner or employer is eligible to receive benefits available under the Act. These include medical aid, rehabilitation, loss of earnings, death benefits, and immunity from civil suit for accidents arising out of the workplace.

In the event of a time loss claim, loss of earnings benefits will be paid at a rate of seventy-five (75)% of the amount determined to be the gross compensable deemed earnings under this policy.

E. Determination of Earnings

A sole proprietor, partner or employer's average weekly earnings will be calculated using whichever amount is lesser of 1) actual proven earnings, or 2) the amount of optional coverage in place at the time of injury, as verified by the board's assessment records. This amount will be deemed to be the earnings for the individual, with the exception of concurrent employer situations, dealt with in further detail in this policy.

The provisions of Policy CL-56, "Minimum Compensation" apply to individuals covered by this Policy AS-18-02.

If a claimant's actual proven earnings are zero or less than zero (e.g. a net loss for the year), the board does not pay loss of earnings benefits. However, the board will provide health care and benefits entitled under the Act.

If a sole proprietor, partner or employer with optional coverage also has concurrent assessed earnings from another employer, those earnings will be included in determining a deemed earnings amount, provided the earnings are being lost as a result of the disability.

Concurrent assess earnings will be adjudicated applying Policy CL-35, "Loss of Earnings Benefits". Such earnings will be considered, even if inclusion results in exceeding the purchased optional coverage amount. However, earnings loss will only be paid on earnings up to the maximum wage rate for the year.

When the individual has operated for less than one year, has no history of earnings, and incurs a work-related disability, loss of earnings will be deemed based on the earnings of an employer in a similar business or occupation, or the amount of coverage purchased whichever is less.

Proof of Actual Earnings

Proof of actual earnings must be provided upon request and in a form acceptable to the board. Generally, this will be the previous year's financial statement prepared by a certified accountant or the income tax return forms submitted to Canada Revenue Agency.

At the discretion of the board, circumstances may require examination of other forms of evidence. This could include, but is not limited to, current year contracts or the board's audit of a sole proprietor, partner or employer's earnings.

The board will determine gross compensable earnings from:

- i) net business income for the previous year as reported to Canada Revenue Agency, subject to audit by the board. The board then adjusts the net business income by including such items as:
 - (a) pension plan and RRSP contributions (if purchased by the business);
 - (b) depreciation and amortization;
 - (c) charitable donations;
 - (d) expenses arising out of the individual's use of personal home or vehicle for business purposes;
 - (e) draws from the business; or
 - (f) other items as appropriate.
- (ii) an audited financial statement of earnings prepared by a certified accountant; or
- (iii) other means as determined by the board, given the individual circumstances of the policy holder.

F. 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) the board determines gross compensable earnings;
- vi) the status of the person remains the same as extended under this policy;
- vii) prompt advisement to the board of any changes that may affect coverage; and
- viii) compliance with the Act.

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

The board reserves the right to cancel coverage where the risk to the fund is considered too great; such as when information has been falsified.

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.

G. Payment of Assessment Premiums

The board may require the individual 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:

- 1) newly registered employers who have been in operation in the Yukon for less than one season;
- 2) employers that request a letter of clearance upon registration; or
- 3) 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 individuals who have had an account established with the board for a period longer than one season, a periodic payment schedule may be worked out.

H. Cancellation of Optional Coverage

Cancellation of optional coverage shall occur when an individual 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 individual 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 individual in writing.

When a person covered by optional coverage is receiving compensation, the board does not automatically cancel the optional coverage. It is the individual'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.

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

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

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.

J. Change in Status

It is the responsibility of the coverage holder to notify the board of any change in status. This includes such circumstances as the policy coverage

holder becoming the worker of another employer or changing status to that of an employer.

Where a sole proprietor or partner periodically hires workers and becomes an employer, worker's compensation coverage will be continued to the employer through subsection 117(1) of the Act. This provision grants the board the authority to deem an individual an employer and a worker. The policy will be transferred and continue for the duration under the same conditions.

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.

K. 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

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

History

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