

 Yukon Workers' Compensation Health and Safety Board	Part:	General and Corporate		
	Board Approval:	Original Signed by Chair	Effective Date:	January 1, 2016
	Number:	GN-07	Last Revised:	
	Board Order:		Review Date:	

NEGLIGENCE COST TRANSFER

GENERAL INFORMATION

Section 71(2) of the *Workers' Compensation Act* S.Y. 2008 (the "Act") allows Yukon Workers' Compensation Health and Safety Board (YWCHSB) to charge all or some of the costs of a claim to a negligent employer's experience account, if that employer is not the employer of the injured worker or a worker of that employer.

PURPOSE

Where negligence has been determined by YWCHSB, this policy provides direction on how costs are transferred.

DEFINITIONS

1. **Causation:** it can be established that the alleged negligent employer and/or his or her worker caused, partly or wholly, an injury to the worker of another employer.
2. **Duty of Care:** the alleged negligent employer and/or his or her worker had a responsibility to the injured person to avoid causing him or her harm.
3. **Negligence:** for the purpose of this policy, a breach of either duty of care or standard of care that has caused injury or death.
4. **Standard of Care:** there is a duty in pursuing an activity to take reasonable care to avoid harm to others. The level of the standard of care varies with the activity.

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

Negligence will be determined by YWCHSB upon the request of the injured/deceased worker's employer or where deemed appropriate by YWCHSB. Although YWCHSB will attempt to identify cases where there is the potential of applying subsection 71(2) of the *Act*, the primary responsibility rests with the injured/deceased worker's employer to request a determination. Requests from the worker's employer must be received within twenty four (24) months of the date of the injury.

Where more than one employer (including the injured worker's employer) is found to be negligent in a particular case, the past and future injury costs of the claim will be apportioned among the negligent employers' experience accounts based on degree of negligence.

Where YWCHSB is satisfied that the injury or death of a worker is due to the negligence of more than one employer, and degrees of negligence cannot be determined, the costs of the injury will be charged equally to the experience accounts of the employers involved.

ROLES AND RESPONSIBILITIES

Employers

Employers have a duty under the *OHS Act*, sections 3-11 to:

- a) Take appropriate measures to ensure that the workplace, machinery, equipment, and processes under the employer's control are safe and without risk to health; and
- b) Ensure that workers are aware of workplace hazards and that appropriate measures are taken to prevent or reduce the risk of occupational illness or injury.

Workers

Workers have a duty to participate in activities to ensure their own health and safety and that of any other person in the workplace.

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, the YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB policy, "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 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).

ACT REFERENCES

Sections 71 and 85
Occupational Health and Safety Act

POLICY REFERENCES

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

HISTORY

GN-07, "Negligence Cost Transfer", effective July 1, 2008, revoked January 1, 2016.
GC-15, "Negligence Cost Transfer", effective January 1, 2008, revoked July 1, 2008.