 Yukon Workers' Compensation Health and Safety Board	<b>Part:</b>	<b>Employer Assessments</b>		
	<b>Board Approval:</b>	Original signed by Chair	<b>Effective Date:</b>	<b>January 1, 2016</b>
	<b>Number:</b>	<b>EA-07</b>	<b>Last Revised:</b>	
	<b>Board Order:</b>		<b>Review Date:</b>	

## **SUPER-ASSESSMENT**

### **GENERAL INFORMATION**

Section 72 of the *Yukon Workers' Compensation Act* S.Y. 2008 (the *Act*) allows Yukon Workers' Compensation Health and Safety Board (YWCHSB) to collect an assessment that covers an employer's higher than normal claims costs, in addition to the employer's ordinary assessment costs.

YWCHSB can levy this "super-assessment" on employers who have failed to have adequate practices and procedures for prevention, and who have persistently higher than normal claims costs. YWCHSB determines what constitutes adequate prevention practices and normal vs. higher than normal claims costs.

### **PURPOSE**

The guiding principle of this policy is to encourage robust prevention practices, which prevent injury and disability. Added benefits to preventing injury and disability are reducing human and monetary costs, which ultimately saves employers money.

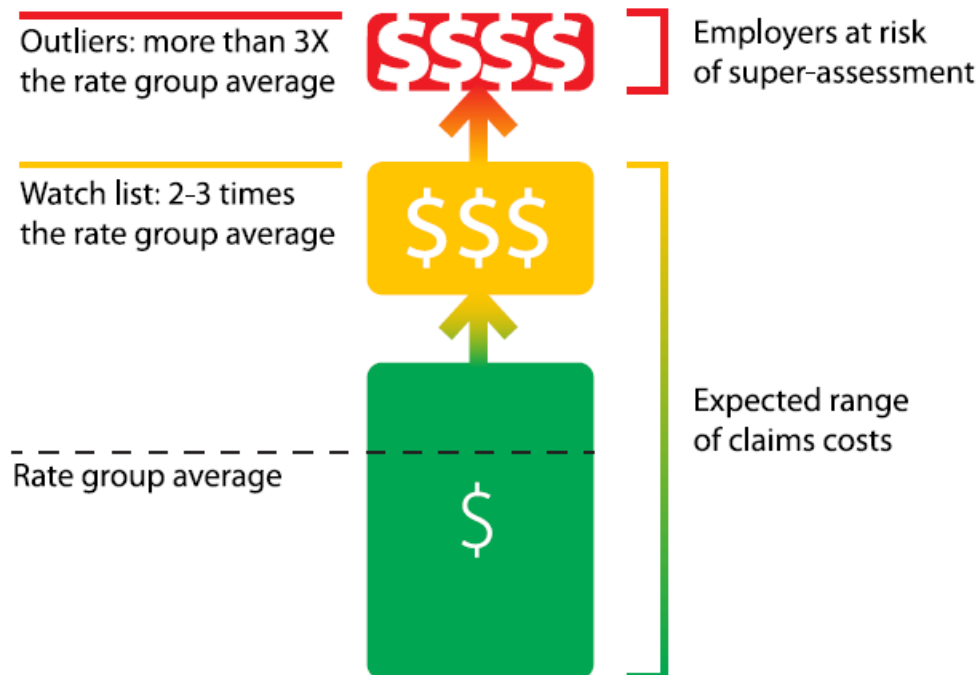
This policy provides direction to YWCHSB staff and clarity to employers regarding what criteria must be met for an employer to be super-assessed and how a super-assessed employer can avoid future super-assessment penalties.

### **DEFINITIONS**

1. **Super-assessment:** an assessment over and above an employer's ordinary annual assessment that covers, in whole or in part, their higher than normal claims costs.
2. **Claims costs:** for the purpose of this policy, an employer's claims costs are the actual costs paid by YWCHSB for accepted claims in the most recent five complete calendar years. Claims costs include actual payments related to compensation (such as medical treatments, loss of earnings benefits, rehabilitation services, and survivor pension awards) and other related expenses made on behalf of injured workers. Payments made on denied claims are not included.

3. **Higher than normal claims costs:** claims costs that are higher than the expected range of claims costs.
4. **Expected range of claims costs:** a range considered normal, set by YWCHSB using actuarial data, that claims costs are expected to fall within based on the employer's industry and rate group. The expected range of claims costs will vary according to each rate group within the YWCHSB rate setting system.
5. **Rate group average:** the average claims cost level, expressed as a percentage of assessable payroll, for the rate group the employer is assigned to under the YWCHSB rate setting system. All employers and industries in the same rate group have the same rate group average.
6. **Outlier:** an employer whose claims costs are more than three times their rate group average.
7. **Watch list:** a list of employers who are being monitored by YWCHSB's Occupational Health and Safety branch because their claims costs, while still within the expected range, are from two to three times their rate group average.
8. **Maximum assessable earnings:** equivalent to the maximum wage rate as defined by the *Workers' Compensation Act*.

The following is a visual representation of the above definitions.



## 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. Having adequate practices and procedures for prevention also helps employers avoid super-assessment.

YWCHSB also administers the *Occupational Health and Safety Act* and *Regulations*. All workplace parties are required by law to know and understand how this legislation applies to their work.

## POLICY STATEMENT

### 1. Criteria for Super-assessment

Under the *Act*, YWCHSB has discretion to levy a super-assessment if both of the following criteria are met:

- a) The employer's claims costs are higher than normal. This is determined using actuarial data and expressed as a range that claims costs are expected to fall within. The range of expected costs will vary according to each rate group within the YWCHSB rate setting system.
- b) The employer does not have adequate practices and procedures for prevention. This is determined using occupational health and safety criteria established by YWCHSB.

Only employers who have an annual payroll that exceeds six times the current annual maximum assessable earnings will be considered for super-assessment. Employers who have a payroll less than this are not subject to super-assessment; however, they are still subject to occupational health and safety intervention and monitoring.

### 2. The Watch List

Focusing on preventing injury and disability, YWCHSB recognizes the importance of early intervention. The watch list identifies employers whose claims costs are still within the expected range, but their safety practices are being monitored for the purpose of early intervention and deciding whether a super-assessment will be levied in the future.

The watch list functions as an early warning system, alerting YWCHSB of claims costs in the high end of the expected range, potentially due to deficiencies in safety management practices. Employers identified on this list will be given the opportunity to improve safety performance, which ultimately reduces claims costs, prevents disability, and helps employers avoid future super-assessment.

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A new watch list is generated each year based on analysis of the previous five years of claims cost data. The process of evaluating claims cost data and monitoring safety performance of all employers on the watch list continues until an employer's claims costs have improved enough that they no longer appear on the watch list. If they fail to improve their safety performance, and claims costs climb higher than the expected range, they are at risk of super-assessment.

YWCHSB also determines whether any factors may warrant removing an employer from the watch list, such as recoveries through a subrogated claim or through the Interjurisdictional Agreement, a fraudulent claim, or negligence causing the work-related injury.<sup>1</sup>

**a) Level 1 intervention**

If an employer's claims costs are between two and three times their rate group average, this is still within the expected range, but at the high end. YWCHSB will review all of the employer's relevant files (such as OHS, claims and assessments files) to determine their overall safety management practices based on factors such as, but not limited to:

- history of serious incidents or injuries;
- number and nature of injury claims;
- frequency and type of safety infractions; and
- compliance with orders and fines.

The review may include meetings and site visits to examine the employer's safety procedures and practices, evidence of equipment maintenance, appropriate training, and any other safety management system elements the employer is required to have under the *Workers' Compensation Act* and *Occupational Health and Safety Act* and *Regulations*. YWCHSB will recommend improvements to avoid super-assessment in the future.

**b) Level 2 intervention**

If an employer's claims costs are more than three times the rate group average, its costs have exceeded the expected range, and it is considered an outlier. The employer's costs to the compensation system could potentially drive assessment rates up for all employers in that industry, and its health and safety practices are likely causing injury and disability to Yukon workers.

YWCHSB's Director of Occupational Health and Safety and Director of Assessments will meet with each outlier employer to explain where its claims costs lie in comparison to the rest of their industry and rate group, and to discuss what prevention criteria the employer will have to meet to avoid super-assessment in the future.

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<sup>1</sup> See YWCHSB policy GN-07, "Negligence Cost Transfer"

The employer's progress will be monitored through scheduled reports and ongoing direct contact with YWCHSB. When the watch list is generated each year, if the employer's claims costs fall into the expected range, or it meets the prevention criteria it is required to meet, it will no longer meet super-assessment criteria. However, the employer will remain on the watch list until its costs are less than twice the rate group average.

**c) Meeting prevention criteria**

YWCHSB emphasizes that employers must improve safety performance to eventually see a reduction in claims costs. Prevention practices and procedures can be implemented immediately, while claims costs will take years to fall (because they are based on a rolling five-year average).

The quickest way for an employer to avoid super-assessment is to demonstrate it is meeting all of the legislative requirements of the *Occupational Health and Safety Act* and *Workers' Compensation Act*.

Examples of legislative requirements include, but are not limited to:

- a demonstrated health and safety management system;
- documented safety procedures and risk mitigation practices for their workplace(s);
- evidence all employees have been appropriately trained for the work they are doing;
- existence of a joint health and safety committee and a safety representative at the worksite(s) as appropriate; and
- a return-to-work program for injured workers.

In addition to meeting all legislated requirements, to avoid future super-assessment the employer must have no penalties or fines levied against it, nor any current or pending prosecutions.

**3. Levying the Super-assessment**

When claims cost data is analyzed each year, any employer who continues to have outlier status and who fails to meet the legislative requirements of both the *Workers' Compensation Act* and the *Occupational Health and Safety Act and Regulations*, may have a super-assessment levied against it.

**a) Method for calculating the super-assessment**

The super-assessment will be calculated based on actual paid claims costs. The super-assessment will be determined based on the difference between actual claims costs and three times the rate group average.

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The first time YWCHSB levies a super-assessment on an employer, it will be calculated at a rate of 10% of the actual costs above the expected range over the previous five years.

*Example:*

*An employer's claims costs over five years are expected to be no higher than \$300,000. The actual costs are \$500,000, which is an overage of \$200,000. The first super-assessment levied against this employer is at a rate of 10% of the overage, or \$20,000.*

The second time an employer is super-assessed the rate is increased by 10 percentage points to 20% of the overage; the third time at 30%, and each time after the rate will increase by 10 percentage points.

These 10% increases will continue to a maximum of 100% of the costs above the expected range. There is no limit to the number of consecutive or cumulative years an employer can be super-assessed. YWCHSB will continue to levy super-assessments on an employer as long as both criteria for super-assessment are met.

**b) Eliminating super-assessment**

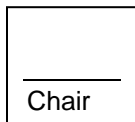
Both criteria for super-assessment – costs higher than the expected range and inadequate practices and procedures for prevention – must be met for YWCHSB to levy a super-assessment.

YWCHSB will continue to monitor the claims costs and prevention practices of a super-assessed employer and eliminate the super-assessment when its claims costs are no longer higher than the expected range, or, their prevention practices and procedures are considered adequate. To be considered adequate, the employer must:

- meet the minimum requirements of the *Occupational Health and Safety Act and Regulations* and the *Workers' Compensation Act*;
- have no penalties, fines, or prosecutions pending against it at the time of review; and
- pass a review of its safety management system, assessed in a manner acceptable to YWCHSB's Director of Occupational Health and Safety.

**4. Maintaining Improved Claims Costs and Prevention Practices**

YWCHSB encourages and supports stakeholders to fully embrace a workplace culture of injury and disability prevention. To achieve this, sustained behavior change is essential.



If a super-assessed employer achieves elimination of its super-assessment, but fails to maintain claims cost improvements and prevention efforts, its super-assessment will be reinstated immediately at the same rate as the last super-assessment that was levied.

*Example:*

*An employer pays super-assessments for three years, then achieves elimination of the super-assessment. The company maintains a good safety record and claims costs are within normal range for a few years. Then, the company meets both criteria for super-assessment again due to a series of OHS infractions and serious injuries resulting in claims costs higher than the expected range. The super-assessment is reinstated at the same rate as the last super-assessment, which was 30% of the company's average in claims costs.*

**ROLES AND RESPONSIBILITIES**

**YWCHSB**

YWCHSB administers and enforces both the *Workers' Compensation Act* and the *Occupational Health and Safety Act and Regulations*, and is responsible for communicating the requirements of the legislation and policies to employers and workers. YWCHSB conducts workplace inspections and focused safety audits for the purpose of implementing this policy and helping to keep Yukon workplaces safe and healthy. It also adjudicates claims, provides return-to-work and rehabilitation assistance, collects assessments and levies penalties when appropriate.

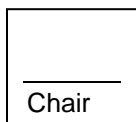
YWCHSB is responsible for providing employers with information on its claims costs and occupational health and safety record. If an employer is identified on the watch list or as an outlier, YWCHSB will recommend what action the employer must take to avoid super-assessment.

**Employers**

Employers will ensure the health and safety of their workers and comply with any workers' compensation and occupational health and safety legislation, regulations and policies.

Employers are responsible for having adequate practices for prevention of injury and disability in the workplace including risk mitigation practices and early and safe return-to-work programs. Health and safety management systems must be an integral part of daily activities.

Employers will encourage worker participation through health and safety training in order to improve workers' ability to identify actual and potential workplace health and safety hazards and to encourage workers' involvement in developing solutions to control work hazards.



Employers are responsible for paying super-assessments if levied in complying with the provisions of the *Workers' Compensation Act* and policies, and for paying for any third party safety assessment necessary for the purpose of demonstrating they have adequate practices and procedures for prevention.

### **Workers**

Workers are responsible for complying with the provisions of the *Workers' Compensation Act* and policies, as well as the *Occupational Health and Safety Act* and *Regulations*. Workers share in the responsibility to promote prevention activities in the workplace including participating in health and safety training, developing risk management practices to control work hazards, and minimizing the impact of workplace injuries by focusing on early and safe return to work.

### **APPLICATION**

This policy applies to the Board of Directors, including the President/CEO, staff of the YWCHSB, employers and workers covered under the *Act*.

### **IMPLEMENTATION**

This policy takes effect on January 1, 2016. When YWCHSB generates the first watch list in 2016, it will use claims cost data from the five-year period spanning 2010 through 2014.

### **EXCEPTIONAL CIRCUMSTANCES**

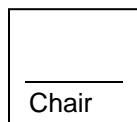
When the circumstances of a case are such that this policy cannot be applied or doing so would bring an unfair or unintended result, YWCHSB will decide the case based on its individual merits and justice. Such a decision will be for that case only and will not be precedent setting.

### **APPEALS**

An employer can request a reconsideration of an assessment decision made under this policy by submitting a written request for review to YWCHSB's Director of Assessments.

YWCHSB's assessment decisions made under this policy can be appealed in writing to YWCHSB's 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).

Any person aggrieved by an OHS decision may appeal to YWCHSB's Board of Directors in accordance with the *Occupational Health and Safety Act*, subsection 26(1). Notice of the appeal must be filed within 21 days of the date of the decision by YWCHSB to the Director of OHS, in accordance with subsection 26(2).

  
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**ACT REFERENCES**

Sections 3, 66, 68, 71, 72, 75, 85, and Part 12  
*Occupational Health and Safety Act, R.S.Y. 2002*

**HISTORY**

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