

 Yukon Workers' Compensation Health and Safety Board	Part:	Employer Assessments		
	Board Approval:		Effective Date:	January 1, 2015
	Number:	EA-02	Last Revised:	
	Board Order:		Review Date:	

**DETERMINING THE STATUS OF A PERSON:
EMPLOYER, WORKER, SOLE PROPRIETOR OR NON-WORKING DIRECTOR**

GENERAL INFORMATION

This policy addresses circumstances where there is a need to determine the work relationship between workplace parties. Most cases are clear in that the employer-worker relationship exists; however, in some situations an individual may be a sole proprietor and not a worker. This policy is designed to provide the criteria for making such a determination.

PURPOSE

This policy defines when a person is a “worker”, an “employer”, or a “sole proprietor” in order to determine whether workers’ compensation coverage is mandatory or optional under the *Workers’ Compensation Act* S.Y. 2008 (the “Act”).

DEFINITIONS

1. **Apprenticeship:** under the *Act’s* definition of a worker, means a person working in a trade under an apprenticeship contract that is registered under a recognized apprentice training program.
2. **Casual Basis:** under the *Act’s* definition of a worker, means employment that is irregular, unpredictable, sporadic and/or is brief in nature.
3. **Contract for Service:** a contractual relationship, written or oral, express or implied, between at least two parties where no worker-employer relationship exists. In such cases, the contract is for services which are auxiliary to the employer’s business (e.g. bookkeeper for a carpet sales and installation business).
4. **Contract of Service:** a worker-employer relationship, written or oral, express or implied. In such cases, the contract is for services that are an intrinsic part of the employer’s business (e.g. carpet layers for a carpet sales and installation business).

5. **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.
6. **Sole Proprietor:** a self-employed person, including a partner in a partnership who operates an unincorporated business. A sole proprietor carries on or engages in any industry and does not employ any workers in connection with that industry.
7. **Temporary Basis:** a period of time not to exceed 10 cumulative calendar days in a calendar year.
8. **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.

POLICY STATEMENT

1. Tests to Determine Whether a Person is a Sole Proprietor or a Worker

In order to compensate workers and assess employers, the Yukon Workers' Compensation Health & Safety Board (YWCHSB) must determine if a work relationship is an employer-worker relationship in a contract of service, in which case coverage is mandatory for the worker(s), or a relationship involving a sole-proprietor in a contract for service, where coverage is optional for the sole-proprietor.

The YWCHSB considers and applies a series of tests to determine the work relationship.

The tests applied and the factors assessed include:

- a) **Degree of control:** this test determines the degree to which one person or business entity controls the work of the other person or body. The greater a person's freedom in matters such as the manner in which the work is performed and quality assessment, hours of work, location, remuneration, and decisions regarding termination, the more likely that the person is a sole proprietor and not a worker.
- b) **Ownership of major equipment:** in an employer-worker relationship, the employer generally supplies the major equipment required by the worker and covers costs related to repairs, insurance, transportation, rental and operation. In a contractual relationship between a person and a sole proprietor, the sole proprietor generally supplies and maintains the major equipment. "Major equipment" refers generally to revenue generating equipment such as earth moving equipment, mobile welding trucks, computers or photocopiers.

- c) **Economic reality:** this test determines whether the person has a chance of making a profit or incurring a loss through the work relationship. In an employer-worker relationship, the employer alone assumes the risk of loss and covers the operating costs of the business. The worker does not assume any financial risk and is entitled to receive full payment, regardless of the financial standing of the business. In a contractual relationship with a sole proprietor, each party may make a profit or incur a loss, and each party usually covers its own operating expenses. There is no guarantee of a steady income, as income depends on the results achieved.
- d) **Dependence:** this test determines whether the tasks performed are a critical part of one person's business and whether the other person is economically dependent on the arrangement. If it is the only source of income, it usually indicates an employer-worker relationship exists. If the person is working for more than one employer concurrently, it can be an indication that the person is a sole proprietor.
- e) **Integration:** this test considers the perspective of the person doing the work. The person is more likely to be a sole proprietor if the work being done is not considered an integral part of the business which the sole proprietor has contracted with. Where one person integrates their activities into another person's commercial activities, the person is most likely in an employer-worker relationship. The worker acts on behalf of the employer, is connected with the employer's business, and dependent upon it (may include areas such as advertising, regulatory authority, solicitation of business on one's own behalf, use of company logos).

2. Employer

a) Yukon Employers

When a person or employer hires workers in Yukon, that person or employer becomes a Yukon employer and must register with YWCHSB within 10 days of hiring their first worker to avoid penalty (see section 80 of the *Act*). Workers are covered from the time they start work in Yukon and the employer must pay assessments from the date work started, regardless of when the employer registers with YWCHSB.

b) Temporary, Non-Yukon Employers

Non-Yukon employers carrying on business in Yukon (i.e. employer from outside Yukon, having non-Yukon workers working in Yukon) on a temporary basis do not register with YWCHSB and their workers are not covered under the *Act*.

To be considered as temporary, the non-Yukon employer that qualifies for this exemption from registration and coverage (see section 3(1) of the *Act*), must:

- i) be using workers who normally work and reside outside Yukon. When an employer hires Yukon workers to work in Yukon, the employer becomes a Yukon employer and must register with YWCHSB and pay assessments; and
- ii) be based outside Yukon. If the employer is based in Yukon or establishes a location in Yukon, the employer becomes a Yukon employer and must register with YWCHSB and pay assessments; and
- iii) carry on business in Yukon for nine (9) or less calendar days per calendar year. “Carry on business” means having any one or more workers working in Yukon. If the employer carries on business in Yukon for ten (10) or more calendar days per calendar year, the employer becomes a Yukon employer and must register with YWCHSB and pay assessments.

3. Non-Working Director

All directors of incorporated companies carrying on in an industry in Yukon are workers under section 3(1) of the *Act*.

However, non-working directors may apply to YWCHSB for an exemption from coverage as a worker. A non-working director is one who:

- a) is not subject to the hazards of the industry of the incorporated company; and
- b) is not performing any service to the incorporated company while acting in their capacity as a director in Yukon (including no directing, negotiating, influencing or decision-making affecting work, and no visits to the incorporated company’s worksites to perform services for the company); and
- c) receives no earnings as payment for work for the incorporated company; and
- d) does not receive a T4 or T4A from the incorporated company; and
- e) applies every year, in writing, to YWCHSB and is deemed by YWCHSB to be a non-working director.

The non-working director may attend the Annual General Meeting of the incorporated company and still be considered non-working as long as he/she does not receive remuneration for attending. The non-working director may do infrequent banking or legal filings and still be considered non-working.

Exemptions will be issued for a maximum of one (1) year at a time, after which time the non-working director will have to re-apply for the exemption.

As a result of the exemption:

- i) the incorporated company, as employer, does not have the protection from legal suit afforded by the *Act* with respect to the non-working director; and
- ii) the non-working director does not have the protection from legal suit afforded by the *Act* with respect to matters arising out of an injury in the workplace.

Directors exempted as workers are still subject to the *Occupational Health and Safety Act*.

4. Worker

Coverage for workers is mandatory on the part of employers. Workers are paid compensation for work-related injuries regardless of whether or not the employer has paid their assessment premiums. In such cases of failure to notify YWCHSB and pay assessments, the employer may be subject to penalties and court enforced action.

Persons who normally work and reside outside the Yukon for an employer who carries on business and is based outside of the Yukon (including outside of Canada), who are in the Yukon on a temporary basis are not workers. Temporary basis means 10 or less calendar days per calendar year, regardless of the number of visits to the Yukon.

5. Sole Proprietors

Where a person is determined to be a sole proprietor under this policy, he/she will be deemed to be a worker in the following circumstances:

- a) He/she obtains optional coverage under the YWCHSB policy, “Optional Coverage for Sole Proprietors, Partners or Employers”.
- b) He/she does any work in an industry for an employer engaged in that industry and has not purchased optional coverage; see section 3(1) of the *Act*. In such cases, the sole-proprietor, for the purposes of the *Act*, will be deemed the worker of that employer.
- i) The intent of this section is to ensure that there is coverage for the individual when they are working on the work-site of an employer. If a sole proprietor is working on the work-site of the employer, and has not purchased optional coverage, the employer will be deemed by YWCHSB to be the employer of the sole proprietor and will provide coverage for the sole proprietor as if they were their worker.

It is noted that a sole proprietor without optional coverage, may be subject to a change in their status over time. They may be deemed the worker of another employer when on an employer’s work-site, or become an employer themselves when hiring workers. In each case, the benefits provided under compensation coverage will change.

With the purchase of optional coverage, sole proprietors are provided with the benefits of the *Act* which include health care, rehabilitation, loss of earnings, death benefits and

immunity from civil suit for injuries arising out of the and in the course of employment. Optional coverage should be purchased to closely reflect the earnings of the individual as loss of earnings benefits are paid out on 75 per cent of the amount of coverage purchased or actual proven earnings, whichever is less.

6. Verifying Good Standing with YWCHSB

The practice of requesting a “Letter of Good Standing” with YWCHSB can be adopted by employers before contracting other employers or sole proprietors. For a principal, contractor or sub-contractor, this ensures that assessment premiums have been paid, and that he or she does not become liable for outstanding assessment premiums in the future. It also ensures that protection from law suits for workplace injuries is in effect, and that compensation protection is in place for workers.

At the end of a contract and before final payment is made, a “Letter of Good Standing” can be requested from YWCHSB to ensure that all assessment premiums are paid and that there are no amounts owed to YWCHSB for the work completed.

APPLICATION

This policy applies to persons who are workers, employers, and persons applying for optional coverage as a sole proprietor under the *Act*.

Sole proprietors are not automatically covered by the *Act* until they apply for optional coverage and become their own worker, or work in an industry for another employer and become a worker of that employer.

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, and apply YWCHSB policy EN-02, “Merits and Justice of the Case”, if applicable. Such a decision will be for that case only and will not be precedent setting.

APPEALS

Reconsideration of a decision regarding a person’s status may be made by submitting a request, in writing, 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 3, 5

POLICY REFERENCES

EA-04, "Optional Coverage for Sole Proprietors, Partners or Employers

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

HISTORY

EA-02, "Determining the Status of a Person: Employer, Worker, Sole Proprietor or Non-working Director", effective July 1, 2008; revoked January 1, 2015

GC-08, "Definition of a Worker", effective January 26, 1995; revoked July 1, 2008

AS-12, "Independent Operator/Contractor or Proprietor", effective January 1, 1993; revoked July 1, 2008