 <p>Yukon Workers' Compensation Health and Safety Board</p>	<b>Part:</b>	<b>Entitlement</b>		
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	<b>Board Order:</b>	2011/01, 2014/01	<b>Review Date:</b>	

## **FIREFIGHTERS' PRESUMPTION**

### **GENERAL INFORMATION**

Sections 17.1 and 17.2 of the *Workers' Compensation Act* (the *Act*) address injuries that, for firefighters, are presumed to be work-related under certain circumstances. These injuries include cardiac arrests that occur within 24 hours of an emergency response and specific primary site cancers.

The presumption under the *Act* allows the Yukon Workers' Compensation Health and Safety Board (YWCHSB) to provide compensation benefits to firefighters for these types of work-related injuries without having to determine work-relatedness under YWCHSB policy EN-01, "Arising out of and In the course of Employment."

This gives YWCHSB the ability to expedite a firefighter's claim, in recognition of the highly hazardous work firefighters do to help and protect others.

### **PURPOSE**

The purpose of this policy is to clarify under what circumstances injuries to firefighters will be presumed to be work-related, in accordance with sections 17.1 and 17.2 of the *Act* and to clarify how a claim for compensation will be adjudicated if the conditions required for the presumption are not met.

### **DEFINITIONS**

1. **Cardiac Arrest:** an abrupt halt of the heart's pumping action, stopping oxygen delivery to all vital organs. Cardiac arrest can be caused by a heart attack, which is the death of a part of the heart muscle due to inadequate blood supply. The intent of the *Act* and of this policy, when referring to cardiac arrest, is to include heart attacks\*.
2. **Date of Diagnosis:** the date of earliest medical documentation that establishes the worker's diagnosis.

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\*Hansard, Yukon Legislative Assembly, March 24, 2011; First, Second and Third Readings of Bill No. 95, *Act to Amend the Workers' Compensation Act*

- 3. Emergency Response:** circumstances where firefighters actively participate at the scene of a crisis situation including, but not limited to, a fire, car crash or other incident, as part of their active firefighter duties. This does not include actions such as driving to the fire hall or to the scene of the emergency response. As well, it does not include other actions away from the scene of the crisis, such as co-ordinating the emergency response, providing dispatching services or performing other support roles.
- 4. Full-time Firefighter:**
- (a) a worker, as defined under subsection 3(1) of the *Act*, who is engaged in firefighting, fire inspection or fire investigation as a full-time member of a fire department or fire brigade;
  - (b) the fire marshal, and each deputy fire marshal, appointed under the *Fire Prevention Act*; and
  - (c) “Full-time” means the whole of the available working time in a week or other unit of time, as defined by the worker’s employer.
- 5. Injury:** as defined by subsection 3(1) of the *Act*. Injury means:
- (a) an injury as a result of an event, or series of events, occasioned by a physical or natural cause;
  - (b) an injury as a result of a wilful and intentional act, not being the act of the worker;
  - (c) a disablement, but does not include the disablement of mental stress or disablement caused by mental stress, other than post-traumatic stress;
  - (d) an occupational disease, which includes a disease from causes and conditions peculiar to or characteristic of a particular trade or occupation or peculiar to the particular employment; but does not include an ordinary disease of life; or
  - (e) death as a result of an injury.
- 6. Part-time Firefighter:** a worker, as defined under subsection 3(1) of the *Act*, who is engaged in firefighting, fire inspection or fire investigation as a part-time member of a fire department or fire brigade; part-time means a portion of the available working time in a week or other unit of time, as defined by the worker’s employer.
- 7. Primary Site Cancer:** the originating site of the cancer in the body.
- 8. Volunteer Firefighter:** a worker, as defined under subsection 6 (1)(a) of the *Act*, who is engaged in firefighting, fire inspection or fire investigation as a volunteer member of a fire department or fire brigade.
- 9. Wildland Forest Firefighter:** a worker, as defined under subsection 3(1) of the *Act*, who is actively engaged in fighting forest fires on the ground.

## PREVENTION

Preventing workplace injuries is the responsibility of everyone in the workplace. All workplace parties are legally obligated to know how the *Occupational Health and Safety Act (OHS Act)* and *Regulations* apply to their work.

In a highly hazardous occupation such as firefighting, employers are required to provide workers with thorough training, appropriate firefighting tools and the required clothing and personal protective equipment, in accordance with the *Occupational Health and Safety Regulations, Part 11 – Firefighting*.

Similarly, firefighters are required to follow their training and correctly use and wear their clothing and equipment.

If injuries do occur it is important for workers and employers to minimize the impacts by:

- (1) getting timely and appropriate health care assistance; and
- (2) when possible, keeping the injured worker at work in safe and productive work or returning the worker to safe and productive work as soon as it is functionally appropriate for the worker to do so.

Once workers return to work, prevention of recurrences and further injuries is of utmost importance.

YWCHSB supports a wholistic approach where the injured worker, their family, the employer, the health care community and YWCHSB work together to achieve this goal.

## POLICY STATEMENT

### 1. Cardiac Arrest – All Firefighters: Presumption Inclusion Criteria

If a full-time firefighter, part-time firefighter, volunteer firefighter or wildland forest firefighter has a cardiac arrest while actively participating in an emergency response, or within 24 hours of the end of actively participating in an emergency response, the cardiac arrest is presumed to be a work-related injury, unless there is evidence to the contrary.

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Chair

## 2. Cancer – Full-time, Part-time and Volunteer Firefighters: Presumption Inclusion Criteria

A full-time, part-time or volunteer firefighter who has attended one or more fire scenes during his/her service as a firefighter, and has been diagnosed with a primary site cancer is presumed to have suffered a work-related injury if:

- a) It is diagnosed as one of the following listed diseases, and the worker is or has been a full-time, part-time or volunteer firefighter for at least as many years as set out in the Board Orders defining the Minimum Cumulative Period of Service for that disease.

### Listed Disease

- i. primary leukemia
  - ii. primary non-Hodgkin's lymphoma
  - iii. primary site bladder cancer
  - iv. primary site brain cancer
  - v. primary site colo-rectal cancer
  - vi. primary site esophageal cancer
  - vii. primary site kidney cancer
  - viii. primary site lung cancer
  - ix. primary site testicular cancer
  - x. primary site ureter cancer
- b) The first diagnosis of the listed disease is after June 30, 2011.  
(Note: Since section 9 of the *Act* requires a worker to apply for compensation within 12 months of the date the work-related injury arose, firefighters are required to apply for compensation within 12 months of the date of the first diagnosis of the listed disease.)
  - c) In the case of primary site lung cancer, the firefighter signs an affidavit swearing he/she has not smoked a tobacco product in the 10 years immediately before the time of the diagnosis.
  - d) There is no evidence to the contrary.

The cancer presumption does not apply to wildland forest fire fighters.

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Chair

### 3. When the Presumption Inclusion Criteria are Not Met

When the presumption inclusion criteria are not met, the firefighter's claim for compensation will be adjudicated in the same manner as all other claims for compensation, applying YWCHSB policies EN-01, "Arising Out Of and In the Course of Employment" and EN-02, "Merits and Justice of the Case."

*Example: A firefighter dies of cardiac arrest within 10 hours of fighting a fire. An autopsy reveals the firefighter had serious pre-existing heart disease (i.e. there is "evidence to the contrary"). The case would no longer fall under the presumption, but it would not be dismissed either. Instead, it would go through the regular adjudication process, applying YWCHSB policy EN-01, "Arising Out of and in the Course of Employment," to determine whether the cardiac arrest was work-related.*

## ROLES AND RESPONSIBILITIES

### Workers

Workers must file a claim for compensation within 12 months of the injury (for listed diseases, the date of injury is the first date of diagnosis).

Workers have a duty under the *Occupational Health and Safety Act* R.S.Y 2002 (section 9) to take all necessary precautions to ensure their safety and the safety of any other person in the workplace, including:

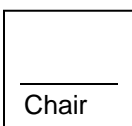
- (1) using appropriate safety clothing and equipment;
- (2) complying with health and safety procedures and instructions; and
- (3) correcting hazards if possible and if not, reporting them to supervisors.

Injured workers must work with YWCHSB and their other health care providers to ensure that treatments continue to contribute to their overall recovery and return to work outcomes, and support mitigation of loss resulting from the injury, as per section 14 of the *Act* (see YWCHSB policy RE-03, "Mitigation of Loss", policy RE-02-2, "Duty to Co-operate, Part 2 of 4: Roles and Responsibilities", and policy RE-02-4, "Duty to Co-operate, Part 4 of 4: Penalties for Non Co-operation").

### Employers

Employers have a duty under the *Occupational Health and Safety Act* R.S.Y 2002 (sections 3-11) to take appropriate measures to ensure that:

- (1) the workplace, machinery, equipment, and processes under the employer's control are safe;



- (2) workers are aware of workplace hazards; and
- (3) appropriate measures are taken to prevent or reduce the risk of occupational illness or injury.

In the event of a work-related injury, employers are responsible for offering the worker suitable work in accordance with section 40 of *the Act* and, where applicable, offering to re-employ the worker in accordance with section 41.

## **YWCHSB**

YWCHSB is responsible for applying the presumption to claims as outlined in this policy and in the *Act*, and for using the regular adjudication process for those claims where the presumption does not apply.

YWCHSB is also responsible for investigating workplace injuries and incidents, determining cause and issuing corrective orders or sanctions as appropriate under the *OHS Act*.

## **APPLICATION**

This policy applies to firefighters covered under the *Act*. It also applies to the Board of Directors, President/CEO, staff of YWCHSB and the Workers' Compensation Appeal Tribunal.


## **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, 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**

Decisions made by the YWCHSB under this policy can be appealed in writing to YWCHSB Hearing Officer in accordance with subsection 53(1) of the *Act*, or any decision made under subsection 14(2) or subsection 40(6) of the *Act* may be appealed directly to the Workers' Compensation Appeal Tribunal.

An appeal must be filed, in writing, within 24 months of the date of the decision by YWCHSB, in accordance with section 52 of the *Act*.

  
Chair

## **ACT REFERENCES**

Sections 3(1), 6(1)(a), 9, 14, 17.1, 17.2, 40(6), 52, and 53(1) of the *Workers' Compensation Act*

*Fire Prevention Act*

*Sections 3 – 11, Occupational Health and Safety Act*

*Occupational Health and Safety Regulations, Part 11 – Firefighting*

## **POLICY REFERENCES**

EN-01, "Arising out of and in the Course of Employment"

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

RE-02-2, "Duty to Co-operate, Part 2 of 4: Roles and Responsibilities"

RE-02-4, "Duty to Co-operate, Part 4 of 4: Penalties for Non Co-operation"

RE-03, "Mitigation of Loss"

## **HISTORY**

EN-14, "Firefighters' Presumption," effective July 1, 2011, revoked March 28, 2014

Chair