



WorkplaceNL Broadens Stress and PTSD Coverage

Ian C. Wallace

Review of mental stress coverage undertaken November 2017

Mental stress not compensable “injury” under *Workplace Health, Safety and Compensation Act* unless related to singular traumatic event in workplace:

s. 2(o) “injury” means (i) an injury ...

arising out of and in the course of employment and includes a recurrence of an injury and an aggravation of a pre-existing condition but does not include stress other than stress that is an acute reaction to a sudden and unexpected traumatic event

Mental stress coverage - Revised policy

EN-18 March 2018

A. Nature of Traumatic Event

i. Former Policy – Single Event

Compensation for mental stress is only considered where disability develops as an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of employment

ii. Revised Policy – Cumulative Effect of Events

Compensation for mental stress is considered where disability arises out of and in the course of employment as either (1) an acute reaction to a sudden and unexpected traumatic event, or (2) a reaction to multiple sudden and unexpected traumatic events

Mental stress coverage - Revised policy

EN-18 Entitlement

B. Nature of Occupation

i. Former Policy – Traumatic Event linked to Occupation

A sudden and unexpected traumatic event is one which is considered uncommon with respect to inherent risks of the occupation and is usually horrific, or has elements of actual or potential violence

ii. Revised Policy – Occupation no longer Relevant

A traumatic event may be the result of witnessing, or being the victim of, a criminal act or a horrific accident. Traumatic events may have elements of actual or potential violence

In all cases, the event(s) must arise out of and occur in the course of the employment, and be clearly and precisely identifiable, and objectively traumatic

Mental stress coverage - Revised policy

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C. Examples of Traumatic Event

i. Former Policy – Threat of Violence Excluded

- a. witnessing a fatality
- b. being the victim of an armed robbery or hostage taking incident
- c. being subjected to physical violence
- d. being subjected to death threats where there is reason to believe the threat is **SERIOUS**

ii. Revised Policy – Threat of Violence Included

- a. witnessing a fatality
- b. being the victim of an armed robbery or hostage taking incident
- c. being subjected to physical violence
- d. being subjected to threats of physical violence where there is reason to believe the threat is serious

Mental stress coverage - Revised policy

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D. Types of Mental Disorder

- i. Former Policy limited coverage to “mental stress” as diagnosed under the Diagnostic and Statistical Manual of Mental Disorders
- ii. Current Policy also requires diagnosis under DSM but expanded to include
 - a. Acute Stress Disorder
 - b. Post-Traumatic Stress Disorder
 - c. Adjustment Disorder
 - d. Anxiety or Depressive Disorder

Mental stress coverage - Revised policy

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E. Medical Diagnosis

- i. Former Policy required diagnosis to be made by “treating physician”
- ii. Revised Policy extends diagnosis to “an appropriate regulated health care professional” identified as
 - a. Physician
 - b. Nurse Practitioner
 - c. Psychologist
 - d. Psychiatrist

Mental stress coverage - Revised policy

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F. No change to Non-Compensable Events and Conditions

i. Pre-existing injury

Claims arising from events that would generally not be considered but are traumatic to a worker because of a pre-existing psychological condition will not be accepted

ii. Workplace fatigue, discipline, and management actions

“Burn out” from usual duties, workplace change, or performance demands is not compensable. Claims associated with an employer’s work-related actions such as employment termination, demotion, discipline, disciplinary or investigative processes, transfer, work schedules, or performance expectations are not acceptable

iii. Diagnostic requirements – there must be a diagnosis of the prescribed disorder in accordance with DSM

Mental stress coverage - Revised policy

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G. Summary – Revised Policy

- i. recognizes mental stress disorders may result from exposure to multiple events
- ii. does not differentiate between occupations
- iii. expands range of traumatic events
- iv. recognizes additional mental health disorders

but does not change exclusions for pre-existing injury, workplace fatigue, discipline and management actions

Presumptive coverage for PTSD effective July 1, 2019

- A. *Workplace Health, Safety and Compensation Act* to provide presumptive coverage for PTSD

92.6 (2) *Where a worker*

- (a) *is exposed to a traumatic event or events in the course of the worker's employment; and*
- (b) *is diagnosed with post-traumatic stress disorder by a psychiatrist or registered psychologist, the post-traumatic stress disorder shall be presumed, unless the contrary is shown, to be an injury that arose out of and in the course of the worker's employment*

- B. PTSD related to discipline and management actions excluded

(3) *Notwithstanding subsection (2), post-traumatic stress disorder that may be the result of an employer's decision or action relating to the employment of a worker including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment does not constitute an injury*

Presumptive coverage for PTSD – Revised definition injury

C. Amendment to definition of “injury”

i. Existing definition

...arising out of and in the course of employment and includes a recurrence of an injury and an aggravation of a pre-existing condition but does not include stress other than stress that is an acute reaction to a sudden and unexpected traumatic event

ii. Revised definition

...arising out of and in the course of employment and includes a recurrence of an injury and an aggravation of a pre-existing condition but does not include stress other than stress that is a reaction to a traumatic event or events

Presumptive coverage for PTSD – Significant features

- A. Eligible Occupations – NL coverage extended to all occupations, not just “First Responders”
 - i. MB, SK, PEI – coverage extended to all occupations
 - ii. YT, BC, AB, ON, NB, NS – coverage restricted to “first responders”
- B. Proof of Trauma – NL requires worker establish exposure to one or more traumatic events
 - i. BC, MB, SK, PEI – requires worker establish one or more traumatic events
 - ii. AB, ON, NB, NS – presumes PTSD is work-related
- C. No Retroactivity – NL presumption only applies to injuries after July 1, 2019 (s. 92.7)
- D. Diagnosis – NL limited to psychiatrists and psychologists
 - i. Other jurisdictions permit diagnosis by physicians
 - ii. No requirement psychiatrist or psychologist licensed to practice in NL

Presumptive coverage for PTSD – What to expect

1. Increase in claims for PTSD – the number of claims has increased in all jurisdictions in Canada where the presumption was introduced
2. Increased workload for psychiatrists and psychologists – only these medical professionals may make the diagnosis to receive the benefit of the presumption
3. Uncertainty on the evidentiary requirements to rebut the presumption of PTSD – what will be required to establish PTSD is not work-related
4. Resistance from workers who believe the presumption precludes inquiring into the nature of the diagnosis, traumatic event or events, treatment, etc.

Presumptive coverage for PTSD – What to expect

5. Reluctance of employers to hire workers exposed to psychological stress – even though PTSD caused by “pre-existing psychological condition” is excluded employers risk having to prove this underlying cause to challenge a diagnosis
6. Pressure from unions and employees to
 - i. Extend coverage to all mental health disorders related to workplace, including chronic stress
 - ii. Extend presumption a diagnosed mental health disorder (“psychological injury”) is work-related unless otherwise demonstrated
 - iii. Limit evidence available to rebut the presumption a psychological injury is work-related
 - iv. Recognize work-related stress inseparable from personal stress and extend the presumption
 - v. Advocate for retroactive application of the benefit of the presumption



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