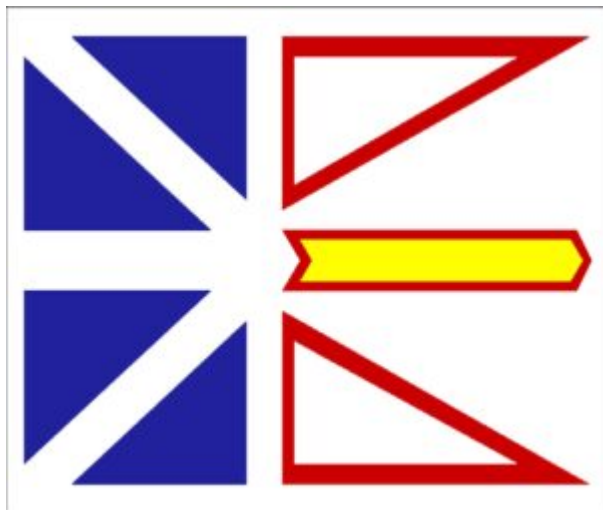


OHS Director's Briefing: Workers' Comp Coverage of PTSD and Mental Stress in Newfoundland



Newfoundland covers both acute and gradual onset mental stress but only if it's triggered by traumatic events. There are also no coverage presumptions for PTSD or other forms of mental stress as there are in most other jurisdictions.

COVERAGE RULES UNDER THE ACT

Section 43(1)(a) of the Newfoundland *Workplace Health, Safety & Compensation Act* says that workers are entitled to compensation for personal injury 'arising out of and in the course of employment.' However, the definition of 'injury' under Section 2(1)(o) specifically excludes 'stress, other than an acute reaction to a sudden and unexpected traumatic event.'

WorkSafeNL COVERAGE RULES

The Newfoundland Workers' Compensation Board, WorkSafeNL, Policy EN-18 provides the crucial details fleshing out the provisions of the Act. In July 2018, the agency modified Policy EN-18 to provide for broader coverage of mental stress claims.

1. Event(s) Must Be Traumatic

For mental stress to be compensable, i.e., payable under workers' comp, it must develop as a result of exposure to one or more traumatic events at work.
Examples:

- Witnessing a fatality;
- Being the victim of an armed robbery or hostage-taking;
- Being subjected to physical violence; and
- Being subjected to threats of physical violence that are serious and believable.

2. Stress Can Be Acute or Chronic

Mental stress can develop in one of two ways: Acutely as a sudden and dramatic reaction to a single and discrete traumatic event; or gradually over time as a cumulative reaction to a series of traumatic events. Example: A paramedic that has responded to 10 fatal and gory traffic accidents gets pushed progressively closer to the edge until finally snapping when exposed to those same traumatic events during response 11.

Previous Policy EN-18 covered only acute reactions; but the new version indicates that both acute and cumulative stress claims are compensable. Even so, the triggering events must be traumatic. Unlike some jurisdictions, Newfoundland doesn't cover stress resulting from repeated or continuous exposure to workplace stressors that fall short of being traumatic.

3. Must Be Work-Related

The traumatic event(s) must arise out of or in the course of the worker's employment. Policy EN-18 stipulates that the following do *not* meet the criterion:

- 'Burn-out' from work duties, workplace changes or performance demands; and
- Stress caused by termination, discipline, demotion, performance review, work schedules and other employer decisions or actions regulating the worker's employment.

4. Disorder Must Be Recognized

The physical or mental disorder the worker suffers in reaction to a traumatic event(s) must be described in the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM), e.g., PTSD, anxiety or depressive disorder or acute stress disorder.

5. Must Be Proper Diagnosis

Finally, the disorder must be appropriately diagnosed under DSM guidelines by a psychiatrist, physician nurse practitioner or other qualified healthcare provider.

No Coverage Presumptions

A worker bringing a mental stress claim has the burden of proving, on a balance of probabilities, that all of the coverage criteria have been met. Unlike most jurisdictions, Newfoundland workers' comp laws include no presumptions, i.e., situations where mental stress is *presumed* to be covered unless specifically rebutted, such as when the victim is an emergency response worker.

LEGAL SOURCES

- The Workplace Health, Safety & Compensation Act
- WorkSafeNL Policy