

# OHS Director's Briefing: Workers? Comp Coverage of PTSD and Mental Stress in Saskatchewan



Saskatchewan covers both acute and gradual onset mental stress but only if it's triggered by traumatic events. But while the triggers are restrictive the coverage presumptions for PTSD and other forms of mental stress are among the broadest and most generous in Canada.

## COVERAGE RULES UNDER THE ACT

Under Section 26(1)(a) of the *Saskatchewan Workers' Compensation Act* workers are entitled to compensation for 'injury' they suffer arising out of and in the course of employment. In 2016, Section 28.1 (1) was added to the Act to provide coverage for PTSD and other 'psychological injuries' described in the American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (DSM). Section 28.1(2) says that when diagnosed by a psychiatrist or psychologist such psychological injuries are presumed to arise out of and in the course of employment unless the contrary is proven.

## WCB COVERAGE RULES

Saskatchewan Workers' Compensation Board (WCB) Policy 02/2017 provides the crucial details explaining when psychological injury claims under Section 28.1 are compensable, i.e., payable by workers' comp and when the presumption applies. The presumption is a big deal because, normally, the worker claiming benefits has the burden of proving, on a balance of probabilities, that all of the coverage requirements have been met. The presumption reverses this burden by presuming that mental stress is covered unless expressly proven otherwise.

While several other jurisdictions have adopted similar presumptions for mental stress, the Saskatchewan presumption is more generous than most because it's not limited to specific disorders like PTSD and/or classes of workers like emergency responders the way it is in most of the other presumption jurisdictions.

## **1. Event(s) Must Be Traumatic**

According to Policy 02/2017, the presumption applies only when the psychological injury is triggered by 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. Onset Can Be Acute or Gradual**

Psychological injury 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. In other words, the fact that the paramedic was able to tolerate the first 10 traumatic incidents doesn't doom the claim.

But whether acute or gradual, the triggering event(s) must still be traumatic. Unlike some other jurisdictions, Saskatchewan doesn't cover stress resulting from repeated or continuous exposure to workplace stressors that cause psychological harm but 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 02/2017 stipulates that workers are expected to tolerate and are thus not covered for stress generated by the 'normal' daily pressures and stressors of employment such as:

- Termination, discipline, demotion, performance review, work schedules, deadlines and other matters inherent to the employer's management of their employment; and
- Interpersonal conflicts with management, co-workers or customers unless the conflict involves 'aggressive, threatening or discriminatory' behaviour.

## **4. Psychological Injury Must Be Recognized**

The psychological injury the worker suffers in reaction to a traumatic event(s) must be one described in the DSM, e.g., PTSD, anxiety or depressive disorder or acute stress disorder.

## **5. Must Be Proper Diagnosis**

Finally, the psychological injury must be appropriately diagnosed under DSM guidelines by a psychiatrist or psychologist. The WCB carefully reviews the diagnosis to ensure it meets the DSM criteria and may require the worker to undergo a Mental Health Assessment by a WCB-accredited psychiatrist or psychologist.

## **Rebutting the Presumption**

While the presumption makes life easier for workers, it's not conclusive. The WCB can still deny the claim if the presumption is rebutted by showing, e.g., that:

- Non-work-related factors were the predominant cause of the psychological injury;
- The worker didn't actually witness or wasn't directly involved in the traumatic work incident(s) that allegedly caused the psychological injury; and/or
- The psychological injury was caused by normal job pressures, employment decisions and/or interpersonal conflicts.

#### LEGAL SOURCES

- The Workers' Compensation Act, 2013
- WCB Policy 02/17'Policy Injuries'Psychological