

OHS Legal Briefing: Workers' Comp Coverage of PTSD & Mental Stress



While work-related stress is as old as work itself, our understanding of how it develops has expanded by leaps and bounds in recent years. In response, just about every province has revised (or is in the process of revising) its workers' comp coverage rules to afford broader coverage for mental stress. The rules are a fast-evolving patchwork that you need to be on top of, particularly if you have operations in multiple jurisdictions.

Defining Our Terms

'Mental stress' is a general term used to describe the psychological and mental disorders that individuals develop in response to the pressures, conditions and events they experience in their life. Technically, workers' comp cover doesn't cover mental stress but specific medical diagnoses associated with it such as post-traumatic stress disorder (PTSD), acute stress disorder, anxiety or depressive disorder and other disorders recognized by current Diagnostic and Statistical Manual (DSM) psychiatric guidelines (which we'll refer to as 'disorders').

The Coverage Conundrum

Workers' comp provides benefits to workers who suffer work-related injuries and diseases, including mental disorders. But while the theory is easy to state, it's hard to apply because mental disorders aren't like other work injuries. When a worker falls off a scaffold or gets crushed in a machine, the injury is obviously work-related; but a worker with PTSD faces a much tougher burden in tracing the disorder back to purely work-related causes.

Chapter 1: The Acute Stress Era

Accordingly, coverage for mental disorders was originally limited to acute traumatic stress, i.e., stress developed in reaction to a discrete, extraordinary and shocking event at work, like being shot at or witnessing a co-worker get killed in a grisly accident. The trauma rule was designed to draw a

clear line between the sudden and unexpected and the normal stress associated with working that workers are expected to cope with, e.g., concerns about job security, deadlines, demotions, transfers and even union affairs.

Another obstacle to coverage is the objective standard that workers' comp boards use to determine if an event was traumatic. In other words, the fact that the worker was actually traumatized isn't enough; for the claim to be compensable, i.e., payable under workers' comp, the worker must also show that the event would have been traumatic to a reasonable person in the worker's position.

Chapter 2: The Addition of Chronic Stress Coverage

Over time, it became clear that the acute trauma rule was out of step with medical evidence showing that psychological disorders often develop gradually over time in response to continuous exposure to traumatic or stressful events. Qu bec and Saskatchewan were the first provinces to tackle the problem by extending workers' comp coverage to non-chronic onset mental stress.

Chapter 3: From Trauma to Stressors

But while chronic stress coverage was a breakthrough, it remained a tough sell. Workers need a confirmed diagnosis of a DSM recognized disorder from a physician or psychologist and must show that the work-related events that caused it were:

- The predominant cause;
- Traumatic as measured by an objective, i.e., reasonable worker standard; and
- Unusual or excessive as compared to normal workplace pressures and stressors.

However, over the past few years, a number of provinces, including Ontario, Qu bec, Alberta, BC and PEI, have relaxed their rules to cover mental disorders caused by not only traumatic events but also harassment, bullying, interpersonal conflicts and other work-related 'stressors' that generally don't qualify as 'traumatic' (although a few of the 'traumatic' jurisdictions such as Saskatchewan interpret 'trauma' more broadly as including harassment).

Chapter 4: Coverage Presumptions

The next step was to establish the presumption that a properly diagnosed case of PTSD or other recognized mental disorder *is* work-related under certain conditions. Today, such presumptions exist in all but 3 jurisdictions' Qu bec, Northwest Territories and Nunavut. However, the scope of the presumption varies:

- Covered disorders: In Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario and PEI, the presumption applies only to PTSD; by contrast, in BC, Newfoundland, PEI and Saskatchewan, it applies to any DSM-recognized mental disorder, including PTSD;
- Covered workers: In Alberta, BC, New Brunswick, Nova Scotia, Ontario and Yukon, the presumption covers only specific classes of workers in inherently stressful occupations like emergency responders, firefighters and police officers; in Manitoba, Newfoundland, PEI and Saskatchewan, the presumption extends to any worker exposed to traumatic events and/or stressors on the job.

WORKERS' COMP COVERAGE OF MENTAL STRESS BY JURISDICTION

JURISDICTION	TYPE(S) OF MENTAL STRESS COVERED(1)	TRIGGERS	SCOPE OF PRESUMPTION(S)(2)	
			Type of Disorder(s)	Type(s) of Worker
Alberta	Acute and Chronic	Trauma and Stressors	PTSD only	*First responders *Correctional officers *Emergency dispatchers *Firefighters *Paramedics *Peace officers *Police officers
BC	Acute and Chronic	Trauma and Stressors	Any DSM recognized mental disorder	*Correctional officers *Emergency medical assistants *Firefighters *Police officers *Sheriffs
Manitoba	Acute only	Trauma only	PTSD only	Any worker
New Brunswick	Acute only	Trauma only	PTSD only	<u>Emergency response workers, i.e.:</u> *Firefighters *Police officers *Paramedics
Newfoundland	Acute and Chronic	Trauma only	Any DSM recognized mental disorder	Any worker
Nova Scotia	Acute only	Trauma only	PTSD only	<u>Front-line or emergency response workers, i.e.:</u> *Firefighters *Police officers *Correctional officers *Paramedics *Nurses *Continuing care assistants *Emergency-response dispatchers

Ontario	Acute and Chronic	Trauma and Stressors	PTSD only	*Firefighters & investigators *Police officers *Emergency response teamers *Paramedics *Emergency medical attendants *Ambulance service managers *Correctional institution workers *Dispatch workers *College of Nurses members who provide direct patient care *Bailiffs *Probation officers *Special constables
Prince Edward Island	Acute and Chronic	Trauma and Stressors	Any DSM recognized mental disorder	Any worker
Qu�bec	Acute and Chronic	Trauma and Stressors	NA	NA
Saskatchewan	Acute and chronic	Trauma only	Any DSM recognized mental disorder	Any worker
Northwest Territories & Nunavut	Acute and chronic	Trauma only	NA	NA
Yukon	Acute only	Trauma only	PTSD only	<u>Emergency response workers, i.e.:</u> *Firefighters *Police officers *Paramedics

Notes

(1) Acute means the mental stress was an acute reaction to one or more traumatic events at work; chronic means the mental stress developed gradually over time

(2) Presumptions mean the particular form of mental stress is presumed to be work-related when experienced by a worker in the category of workers the presumption covers

Rebutting Coverage Presumptions

However, even where presumptions exist, they can be rebutted by showing, among other things, that:

- Non-work-related factors were the predominant cause of the disorder;
- The disorder was a pre-existing condition, i.e., the worker had it before being exposed to the trauma or stressors at work; and/or

- The disorder was caused not by trauma or stressors but plain old burn out or other normal job pressures.

TAKEAWAY'12 ACTION POINTS

Workers' comp coverage for mental disorders vary significantly by jurisdiction:

1. In Manitoba, New Brunswick, Nova Scotia, Saskatchewan and Yukon, workers' comp covers mental stress only when it's an acute reaction to one or more sudden and unexpected traumatic events.
2. In Alberta, BC, Newfoundland, Ontario, PEI, Qu bec, Northwest Territories and Nunavut, workers' comp covers disorders developed acutely by a reaction to traumatic events but chronic disorders that develop cumulatively and gradually over time.
3. For chronic mental disorders to be compensable, the worker must get a diagnosis from a physician or psychologist for a DSM-recognized disorder that follows the most recent DSM diagnostic guidelines for the disorder.
4. Among the chronic mental disorders jurisdictions, the coverage triggers differ:
 - In Newfoundland, Saskatchewan, Northwest Territories and Nunavut, the disorder must be caused by exposure to one or more traumatic events at work;
 - In Alberta, BC, Ontario, PEI and Qu bec, the disorder may be caused by either exposure to traumatic events or other non-traumatic workplace stressors.
5. In Alberta, Nova Scotia, Ontario and Yukon, PTSD is presumed to be work-related if the worker is an emergency responder, firefighter, police officer or other specific occupation deemed inherently stressful.
6. In BC, the emergency responder presumption covers not just PTSD but any DSM-recognized mental disorder.
7. In Manitoba, the PTSD presumption applies to any worker exposed to traumatic events at work.
8. In Newfoundland and PEI, the presumption applies to not just PTSD, but any DSM-recognized mental disorder and any worker exposed to traumatic events or stressors at work.
9. In Saskatchewan, the presumption also applies to any DSM-recognized mental disorder and any worker exposed to traumatic events, which is interpreted broadly to include severe workplace harassment.
10. In Qu bec, Northwest Territories and Nunavut, there are no coverage presumptions for mental disorders.
11. In all cases, mental disorders aren't covered if they're the result of normal work-related stress and job pressures.
12. In many jurisdictions, workers' comp boards use an objective standard to determine if an incident or condition was traumatic or stressful based not on the worker's experience but how a reasonable person in the worker's position would have reacted.

LOOK UP THE RULES IN YOUR JURISDICTION

Find out what the workers' comp coverage rules for mental stress are in your jurisdiction

- Alberta

- British Columbia
- Manitoba
- New Brunswick
- Newfoundland
- Nova Scotia
- Ontario
- Prince Edward Island
- Qu bec
- Saskatchewan
- Northwest Territories & Nunavut
- Yukon