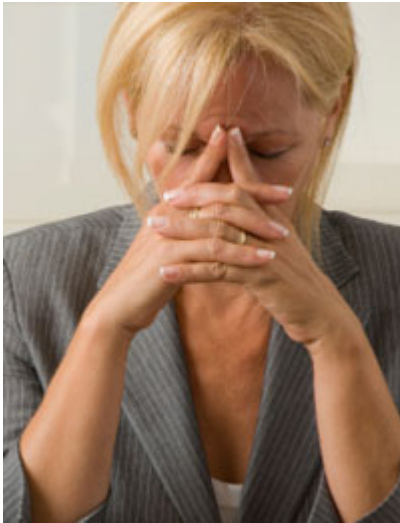


Proposed Changes to BC's Workers' Comp Law on Mental Stress



Guest blogger Robert Smithson, a BC labour and employment lawyer, discusses the proposed changes to BC's *Workers' Compensation Act* as to coverage of mental stress claims.

Getting Stressed about Workers' Compensation Amendments

In 2011, the British Columbia government introduced the *Workers Compensation Amendment Act, 2011*, which (not surprisingly) will amend certain portions of that statute. Perhaps the aspect of Bill 14 which is—or should be—of most concern to employers is the broadening of WorkSafeBC benefits coverage for stress conditions arising in the workplace.

As of my last check, these amendments had not progressed beyond first reading in BC's Legislative Assembly. With any luck, they'll never reach second reading.

Don't get me wrong, I'm not opposed to the workers compensation regime. Nor do I turn a blind eye to the issue of mental stress or its impact on workers.

I do, however, have a large (and growing) concern about the potential for abuse of these benefits, the negative effect on workplaces of more workers taking compensable medical leaves, and the impact on the public purse of paying too many people to stay home for stress-related reasons.

The BC government's "Background" on this legislation states, "What are the effects of mental stress? Since mental stress most often results in physical and psychological symptoms, it has a significant effect on workers and their families. It can also impact the workplace through reduced efficiency, frequent absences, indifference, decreased creativity and poor decisions that can result in accidents and injury." I can't really argue with any of that.

I can argue with the range of situations which would be covered for benefits purposes. The "Background" goes on to state, "Bill 14 proposes expanding compensation for mental stress arising from the course of the worker's

employment to go beyond the current requirement of 'an acute reaction to a sudden and traumatic event' and include: the reaction to one or more traumatic events; the reaction to a significant work-related stressor; or the reaction to a cumulative series of significant work-related stressors."

According to the "Backgrounder," certain stressful events will be excluded from benefits coverage, but "exposure to workplace violence or bullying" and certain forms of "harassment" would be included. And, to be eligible for mental stress compensation in BC, a recognized diagnosis will be required.

This is where things get dicey. Because, virtually every employer I deal with knows at least two things about today's workplace.

First, the modern trend seems to be for employees to cry "harassment" or "bullying" at even the slightest of workplace conflicts. It sometimes seems that nobody quits an undesirable job situation to go elsewhere any longer – they just hang around until they can file a statutory complaint for harassment/discrimination or a court action for constructive dismissal.

The proposed workers compensation amendments will surely make that situation worse. Making stress arising out of workplace conflict compensable will legitimize all kinds of minor and baseless claims and will give undeserving individuals the opportunity to claim time off with pay.

Second, as many employers have experienced first-hand, seemingly the easiest thing in the world to get is a doctor's note authorizing a medical leave for "stress related reasons". If I had a dollar for every one of those one-sentence notes I've read in my years of practice, I'd be retired by now (I think I'm getting a little stressed just thinking about why I'm not yet retired).

The combination of the proposed amendments and doctors' willingness to write a one-sentence authorization for time off work for (seemingly) every person who has a gripe with his or her workplace may prove to be truly disastrous. Employers should be forgiven for fearing the day that these proposed amendments become law.

It's possible that legislators, doctors, and stressed-out employees reading this article will be offended by my comments. In response, I will say that I know what I've seen and what employers have told me, and I have no doubt these proposed legislative amendments will stress employers to the point of wanting to take a medical leave themselves

*Robert Smithson is a labour and employment lawyer, and operates Smithson Employment Law in Kelowna. For more information about his practice, or to subscribe to **You Work Here**, visit www.smithsonlaw.ca. This subject matter is provided for general informational purposes only and is not intended as legal advice.*

OHS Insider Resources

For more information on mental stress in the workplace, go to our Psychological Safety Compliance Center, where you'll find an infographic, model psychological harassment policy and a stress prevention at work checklist among other tools and resources.