



Workplace Safety and Insurance Board releases new mental stress policy

October 1, 2002

On May 10, 2002, the Workplace Safety and Insurance Board issued a revised policy on traumatic mental stress. The policy reflects revisions made following a consultation process that began in June 2001 and was reported on this web site (see [“Notice to clients on new harassment and stress policies at the WSIB”](#)). The policy now provides as follows:

“A worker is entitled to benefits for traumatic mental stress that is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of employment.

A worker is not entitled to benefits for traumatic mental stress that is a result of the employer’s employment decisions or actions.”

The policy contemplates two branches under which traumatic mental stress may be compensable: when there is an acute reaction, and when stress results from the cumulative effect of a series of events. However, in each case there must be at least one “sudden and unexpected traumatic event”. Stress that develops gradually due to general workplace conditions, or that is a reaction to employer decisions that are part of the employment function, is not compensable. The guidelines provide an interpretation to be given to the terms of the policy.

Sudden and unexpected traumatic event

A “sudden and unexpected traumatic event” includes a criminal act, harassment or a horrific accident, involving actual or threatened death or serious bodily harm to the worker or others. Specific examples of such events include

- witnessing a fatality or horrific accident;
- witnessing or being the object of an armed robbery or hostage-taking;
- being the object of physical violence, death threats, or serious threats of physical violence;
- being the object of harassment that includes physical violence and threats of physical violence;
- or
- being the object of harassment that includes being placed in an actual or potential life-threatening situation.

As always in the case of compensable injuries, the event must arise out of and occur in the course of



employment. As well, it must be

- clearly and precisely identifiable;
- objectively traumatic (i.e. most people would find it traumatic); and
- unexpected in the normal course of the worker's employment.

Acute reaction

An “acute reaction” is defined as a significant or severe reaction that results in a psychological response that meets an Axis I Diagnosis in accordance with the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). It may be immediate (occurring within four weeks of the traumatic event) or delayed. If the reaction is delayed, the policy places no outside time limit on when it can occur.

Cumulative effect

“Cumulative effect” is defined as a final reaction to a series of sudden and unexpected traumatic events. Under this heading, workers who are routinely exposed to such events and were previously able to tolerate them may be entitled to benefits when they suffer a final severe reaction. It is not necessary that the last event before the reaction be the most traumatic.

Diagnostic requirements

As noted above, all claims of traumatic mental stress will require an Axis I diagnosis in accordance with DSM-IV. However, for immediate acute reactions, the diagnosis may be made by “an appropriately regulated health care professional”, while the diagnosis in the case of delayed acute or cumulative effect reactions must be made by a psychiatrist or psychologist.

In Our View

Employers will likely be concerned that harassment has been retained as a potential cause of traumatic mental stress. However, the guidelines indicate that, to be compensable, harassment will likely have to involve a threat of physical harm to the worker in some form. As well, it appears that the concept of cumulative effect has been modified so as not to include ongoing or continuous harassment. It remains to be seen how the treatment of harassment-induced mental stress develops in practice.

The policy was also modified in response to employer concerns that an Axis I diagnosis be required for all claims of traumatic mental stress. In the previous proposal, such a diagnosis was required for delayed onset or cumulative effect claims only.

Finally, the policy is to apply to any single traumatic event or, in the case of cumulative effect claims, retroactively to traumatic events occurring on or after January 1, 1989. While employers were against retroactivity, worker groups were also strongly opposed to the policy applying to pre-1998 injuries, as



**EMOND
HARDEN**
LABOUR & EMPLOYMENT LAW
DROIT DU TRAVAIL ET DE L'EMPLOI

that is when the restrictions on entitlement imposed under the *Workers' Compensation Reform Act, 1996* (Bill 99) came into effect.

Although this policy seems to limit the types of claim allowed, adjudicative practice at the WSIB often diverges from policy. In one case, unwelcome sexual attention in an isolated location has been considered a “threat of physical violence” – even when the male harasser did not utter or conduct himself in a physically threatening manner. Notwithstanding the details of the policy, some at the WSIB have decided that “stress claims are now allowable” under wider circumstances. Employers should be alert to this and be prepared to resist these claims where the policy does not really apply.

For further information, please contact [Colleen Dunlop](#) at (613) 940-2734.