

# HR Legal Trends: Workers' Comp & Mental Stress



Work-related stress is as old as work itself; what *has* changed is our understanding of how work-related stressors cause it to happen. And, now the workers' comp boards are scrambling to align their outdated mental stress coverage rules with the modern psychiatry. While this might sound like some far-removed scientific phenomenon, the proliferation of mental stress claims makes it of immediate importance to you as an HR director, especially if your organization operates in multiple jurisdictions.

## **Defining Our Terms**

“Mental stress” is a general term used to describe the psychological and mental disorders that people develop in response to the pressures, conditions and events they experience in their life. Technically, workers' comp 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 American Psychiatric Association Diagnostic and Statistical Manual (DSM) psychiatric guidelines (which we'll refer to as “disorders”).

## **The Coverage Conundrum**

Mental disorders aren't like other work injuries. When a worker falls off a scaffold or gets crushed in a machine, everybody knows the injury is work-related; by contrast, the causes of a mental disorder like PTSD are often invisible and hard to trace. That makes it harder for workers claiming benefits to meet their burden of proving that the disorder was work-related.

## **Chapter 1: The Acute Stress Era**

Originally, mental disorders were compensable, i.e., payable under workers' comp, only if they were the product of acute traumatic stress, that is, stress developed in reaction to a discrete, identifiable, extraordinary and shocking event at work, like 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 such as concerns over job security, deadlines, demotions, transfers, etc.

Another obstacle to coverage is the objective standard that workers' comp boards use

to determine if an event is traumatic. Under a subjective standard, the fact that the worker was actually traumatized is conclusive; but under an objective standard, the worker must also show that the event would have been traumatic to a reasonable person in his/her position.

## Chapter 2: The Addition of Chronic Stress Coverage

Over time, it became clear that the acute trauma rule wasn't adequate to cover the psychological disorders that develop gradually over time in response to continuous and cumulative exposure to stressors, including those that aren't traumatic. Québec and Saskatchewan were the first provinces to tackle the problem by extending workers' comp coverage to chronic onset mental stress.

## Chapter 3: From Trauma to Stressors

But chronic stress coverage was/is a tough sell requiring a confirmed diagnosis of a DSM-recognized disorder from a physician or psychologist. The worker also had to show that the work-related events that caused it were:

- The predominant cause;
- Traumatic as measured by an objective 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, 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 don't quite rise to the level of "traumatic" but are still significant enough to do psychological harm, such as a continuing course of workplace harassment. (In addition, 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—Québec, Northwest Territories and Nunavut. However, the scope of the presumption varies:

- Covered disorders: In Manitoba, New Brunswick, Nova Scotia, Ontario and PEI, the presumption applies only to PTSD; by contrast, in Alberta, BC, Newfoundland, PEI and Saskatchewan, it applies to any DSM-recognized mental disorder, including but not limited to PTSD;
- Covered workers: In 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; and
- In Alberta, the presumption covers traumatic disorders and PTSD.

### 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 non-traumatic work stressors	*Traumatic *PTSD	Any worker

BC	Acute and Chronic	Trauma and non-traumatic work 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 non-traumatic work 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 non-traumatic work stressors	Any DSM recognized mental disorder	Any worker
Québec	Acute and Chronic	Trauma and non-traumatic work stressors	None	None

Saskatchewan	Acute and chronic	Trauma only	Any DSM recognized mental disorder	Any worker
Northwest Territories & Nunavut	Acute and chronic	Trauma only	None	None
Yukon	Acute only	Trauma only	PTSD only	<u>Emergency response workers, i.e.:</u> *Firefighters *Police officers *Paramedics

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### 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 non-work related pre-existing condition, i.e., the worker had it before being exposed to the trauma or stressors at work;
- The disorder was caused not by trauma or stressors but plain old burn out or other normal job pressures; and/or
- The disorder was solely caused by the worker's willful and deliberate misconduct.

### **TAKEAWAY—13 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, Québec, Northwest Territories and Nunavut, workers' comp covers disorders developed acutely by a reaction to traumatic events but also 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 meets 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 Québec, the disorder may be caused by either exposure to traumatic events or other non-traumatic workplace stressors.

5. In 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 and Alberta, 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 non-traumatic 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 Alberta, there are 2 coverage presumptions—one for PTSD and one for traumatic stress—applicable to any worker exposed to the appropriate triggers.
11. In Québec, Northwest Territories and Nunavut, there are no coverage presumptions for mental disorders.
12. No jurisdiction covers mental disorders that are the result of normal work-related stress and job pressures or the claiming worker's willful and serious misconduct.
13. 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.