

Traumatic Mental Stress In The Workplace: Identifying And Managing Potential Risks



Most Ontario employers are required to have mandatory coverage under the *Workplace Safety and Insurance Act* (“WSIA”).

In exchange for making predictable premium payments to the Workplace Safety and Insurance Board (“WSIB”), the majority of employers gain access to WSIB benefits for workers who are injured in the course of their employment and not able to work as a result. Premiums reflect the claims experience of similarly situated employers with incentives built into the system to promote safe workplace practices.

A recent emerging area of WSIB entitlement relates to traumatic mental stress (“TMS”) experienced by Ontario workers. However, what qualifies as TMS in the course of employment is often misunderstood by employers and employees alike. TMS is conceptually distinct from chronic mental stress claims, which are covered under a separate WSIB policy.

The WSIB recently released its new [Operational Policy 15-03-02](#) regarding the initial entitlement adjudication of TMS claims (the “Policy”).

Notably, the Policy explicitly clarifies that a worker is not entitled to WSIB benefits for TMS caused by decisions or actions of the worker’s employer relating to the worker’s employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the employment. While such actions may have other consequences for the employer under the *Employment Standards Act* or the *Human Rights Code*, they do not support TMS claims before the WSIB.

Conversely, the Policy provides that a worker will generally be entitled to benefits for TMS if an appropriately diagnosed mental stress injury is caused by one or more traumatic events arising out of in the course of the worker’s employment. The WSIB decision-maker must identify that one or more traumatic events occurred. A traumatic event may result from a criminal act or a horrific accident. It may involve actual or threatened death or serious harm against the worker, a co-worker, a worker’s family member or others. The traumatic event is expected to have been sudden and unexpected. In all cases, the event(s) must arise out of and occur in the course of employment, be clearly and precisely identifiable and be objectively traumatic.

The Policy identifies several categories of potentially eligible traumatic events,

including but not limited to horrific accidents, criminal activity and/or workplace harassment with threatened or actual violence.

A worker must either suffer or witness the work-related traumatic event(s) first-hand or hear the work-related traumatic event(s) first-hand through direct contact with the traumatized individual(s), such as speaking with the victim(s) on the radio or telephone or other communications device as the traumatic event(s) is/are occurring.

The Policy does make allowance for the cumulative effect of multiple traumatic events where the worker was previously able to tolerate past traumatic events. The final reaction to a series of traumatic events is known as the cumulative effect. Each traumatic event must have had some effect or life disruption on the worker, even if the prior event(s) did not functionally impair the worker. Clinical or other evidence is reviewed to determine the cumulative effect. There is recent appellate guidance on how the WSIB may confirm the cumulative event.

Before any TMS claim can be adjudicated, there needs to be a specific diagnosis using the Diagnostic and Statistical Manual of Mental Disorders (DSM), which may include the following: acute stress disorder; post-traumatic stress disorder (PTSD), adjustment disorder, or an anxiety or depressive disorder. This diagnosis may be provided by physicians, nurse practitioners, psychologists or psychiatrists.

The WSIB decision-maker must be satisfied, on a balance of probabilities, that the traumatic event(s), or the cumulative effect of a series of traumatic events arose out of and in the course of the worker's employment and caused, or significantly contributed to, an appropriately diagnosed mental stress injury.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Author: [Jeffrey Percival](#)

Pallett Valo LLP