

FTR Now

Ontario Passes Legislation Creating a Statutory Presumption of Work-Relatedness for First Responders Diagnosed with PTSD

Date: April 5, 2016

On April 5, 2016, the Ontario government passed Bill 163, [Supporting Ontario's First Responders Act \(Posttraumatic Stress Disorder\) 2016](#), amending the *Workplace Safety and Insurance Act, 1997* ("WSIA") and the *Ministry of Labour Act*. The Bill will come into force upon Royal Assent.

Bill 163 creates a statutory presumption in favour of granting workers' compensation benefits to first responders diagnosed with posttraumatic stress disorder ("PTSD"). The creation of this presumption will likely have costs consequences for employers of first responders and will impact Workplace Safety and Insurance Board ("WSIB") appeal strategy.

In our [FTR Now of February 23, 2016](#), we provided an overview of Bill 163 and its implications for employers of first responders. In this *FTR Now* we discuss Bill 163 as amended by the Standing Committee on Social Policy.

Bill 163 Amendments to WSIA

As previously discussed, Bill 163 creates a rebuttable statutory presumption of work-relatedness if a first responder is diagnosed with PTSD by a psychiatrist or psychologist, as follows:

The posttraumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment, unless the contrary is shown.

A rebuttable presumption shifts the burden of proof to the employer to show that the worker's PTSD is not work-related. Statutory presumptions already exist in the WSIA for certain prescribed cancers and heart disease suffered by firefighters.

As amended at Committee, Bill 163 will now apply to the following "first responders":

- Police officers (including First Nations constables)
- Firefighters (full-time, part-time, and volunteer firefighters, and fire investigators)
- Paramedics and emergency medical attendants
- Members of an emergency response team
- Ambulance service managers
- Workers in correctional institutions, places of secure custody or places of secure temporary detention
- Workers involved in dispatch.

The amendments made at Committee include added definitions of "ambulance service," "member of an emergency response team" and "worker involved in dispatch."

For the statutory presumption to apply, first responders must receive a diagnosis of PTSD from either a psychiatrist or psychologist that is consistent with the description of PTSD in the DSM-V (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition).

The presumption applies to both new and pending WSIB claims, but not those that have been exhausted through an appeal process. Former first responder workers who develop PTSD within a specified time period of Bill 163 coming into force will be



entitled to the benefit of the presumption.

Bill 163 also amends the *Ministry of Labour Act* to give the Minister of Labour authority to ask employers of workers covered by the PTSD presumption to provide their plans to prevent PTSD and to publish those plans.

Please see our [earlier FTR Now](#) for a discussion of the key challenges that will be faced by employers of first responders as a result of the passage of Bill 163.

As noted above, Bill 163 will come into force upon Royal Assent. Typically, a Bill will receive Royal Assent shortly after it passes in the Legislature. We will monitor and communicate the specific date when it is known.

Conclusion

Bill 163 will likely have a significant impact on employers of first responders. To address the implications of Bill 163, employers of first responders should review their policies and procedures with the goal of reducing incidents of PTSD, assisting workers with PTSD and determining if suitable modified work can be made available to workers diagnosed with PTSD. By doing so, employers of first responders may be able to help first responders minimize, cope with and recover from PTSD.

If you have any questions about Bill 163, please contact Joseph Cohen-Lyons at 416.864.7213, Samantha C. Seabrook at 416.864.7024, [Jodi Gallagher Healy](#) at 519.931.5605 or your regular [Hicks Morley lawyer](#).

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