

## FTR Now

# WSIB Issues Final Chronic Mental Stress Policy: What Employers Need to Know

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Recent amendments to the *Workplace Safety and Insurance Act, 1997* (WSIA) will expand the scope of benefit entitlement for mental stress to include chronic mental stress. The Workplace Safety and Insurance Board (WSIB) has just issued the final version of its operational policy in support of this new entitlement. This expanded entitlement will have significant consequences for employers. Learn what you need to know in this *FTR Now*.

As we recently reported to you in our *FTR Now* of May 29, 2017 [Workplace Safety and Insurance Act Amended to Allow Benefit Entitlement For Chronic Mental Stress](#), amendments to the WSIA allowing for benefits for chronic mental stress arising out of and in the course of employment will come into force on January 1, 2018. In support of those amendments, this past spring the WSIB issued a draft *Traumatic or Chronic Mental Stress* policy for consultation.

The WSIB's consultation process ended in July 2017 and on September 21, 2017, the WSIB Board of Directors approved the final policy, Document 15-03-14 [Chronic Mental Stress \(Accidents on or After January 1, 2018\)](#) (*Policy*). Of note, the *Policy* is a stand-alone document and has not been combined with the *Traumatic Mental Stress Policy* (Document 15-03-02) as was originally proposed. The latter policy has been amended to clarify the differences between the two mental stress entitlements. Both the new *Policy* and the amended *Traumatic Mental Stress Policy* will come into force on January 1, 2018.

## What Employers Need to Know About the New Chronic Mental Stress Policy

The *Policy* includes the following provisions of note:

- a worker will generally be entitled to benefits for chronic mental stress where: 1) there is an appropriate diagnosis; and 2) where the injury is caused by a substantial work-related stressor arising out of and in the course of employment;
- an appropriate diagnosis must be made: 1) in accordance with the Diagnostic and Statistical Manual of Mental Disorders (DSM); and 2) by a qualified regulated health care professional;
- a work-related stressor is substantial where "it is excessive in intensity and/or duration in comparison to the normal pressures and tensions experienced by workers in similar circumstances";
- workers in jobs with a high degree of routine stress (where the worker typically has responsibility over matters involving life and death, or routine work in extremely dangerous circumstances) may also be entitled to benefit entitlement for chronic mental stress: consistent exposure to a high level of routine stress over a period of time may qualify as a substantial work-related stressor;
- interpersonal conflicts generally will not give rise to entitlement for chronic mental stress benefits unless they amount to workplace harassment or they result in conduct that a reasonable person would perceive as egregious or abusive;
- the definition of "workplace harassment" generally follows the definition found in the *Occupational Health and Safety Act*;
- the events giving rise to chronic mental stress must be identifiable to the WSIB decision-maker, e.g. corroborated through information or co-workers etc.;
- the WSIB decision-maker must be satisfied, on a balance of probabilities, that the substantial work-related stressor(s): 1) arose out of and in the course of employment; and 2) was the **predominant cause** of an appropriately diagnosed mental stress injury;
- **predominant cause** "means that the substantial work-related stressor is the primary or main cause of the mental stress injury";
- consistent with the wording of the WSIA and the *Traumatic Mental Stress Policy*, there is no entitlement to benefits for

chronic mental stress which is caused by decisions or actions by the employer relating to the worker's employment, such as a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment;

- also consistent with the WSIA, the *Policy* only applies to accidents occurring on or after January 1, 2018. There are no transitional provisions.

The standard of proof for causation in the *Policy* has changed from "significant contributing cause" in the draft policy to "predominant cause", consistent with the test applied by other Canadian workers' compensation boards that compensate for chronic mental stress. The "predominant cause" test was proposed by employers in the policy consultation process and adopted by the WSIB, which determined that this test was the more appropriate one to apply given the "inherent complexity" of chronic mental stress claims.

The *Policy* will also permit nurse practitioners, in addition to physicians, psychologists and psychiatrists, to provide the appropriate diagnosis. Concern was expressed by employers in the consultation process that a family physician may not have the expertise to provide a DSM diagnosis. That concern may be compounded by the express reference to nurse practitioners. The *Policy* states that in complex cases, a further assessment from a psychologist or psychiatrist may be required.

## **Implications for Employers**

The Policy will have a significant impact on all employers covered by the WSIA. A significantly expanded scope of entitlement for mental stress under WSIA will put increased focus on employers to limit and address stressors in the workplace and to create modified work opportunities that take into account psychological (as opposed to purely physical) restrictions. All employers, specifically those with stressful workplaces, will need to take additional steps to reduce workplace stress and minimize the existence of substantial workplace stressors in order to limit costly and complicated stress-related lost time claims.

Employers who have ongoing mental stress cases should ensure that the events giving rise to these cases have been, and continue to be, well-documented. More generally, employers should be reviewing their practices, policies and procedures in order to ensure that they are protecting themselves to the extent possible from potential mental stress claims.

Notably, the "historical trade-off" removing employees' right to sue their employer (and specified other parties) in exchange for the ability to claim benefits under the WSIA system will be expanded to workplace chronic mental stress situations when this new area of entitlement is available as of January 1, 2018. Employers should seek advice regarding the impact of this change on specific pieces of employee litigation.

For more information on these new changes, please contact [Jodi Gallagher Healy](#) at 519.931.5605, or your [regular Hicks Morley lawyer](#).

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