

FTR Now

Bill 177 Introduces Transitional Provisions for WSIB Mental Stress, Increased Fines under OHSA

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On November 14, 2017, the Ontario government introduced Bill 177, the [Stronger, Fairer Ontario Act \(Budget Measures\) 2017](#), omnibus legislation which, if passed, would amend several employment-related statutes. In this *FTR Now*, we discuss the proposed changes to the *Workplace Safety and Insurance Act, 1997* and the *Occupational Health and Safety Act*.

Workplace Safety and Insurance Act, 1997 (WSIA)

Amendments to the WSIA allowing for benefits for mental stress arising out of and in the course of employment will come into force on January 1, 2018 (for more detail, see our *FTR Now* [WSIB Issues Final Chronic Mental Stress Policy: What Employers Need to Know](#)).

Bill 177 proposes further amendments to WSIA that will provide transitional rules for determining entitlement to benefits for mental stress claims that arose prior to January 1, 2018.

The key aspects of the transitional rules set out in Bill 177 are:

- Workers or their survivor(s) who have not yet filed a claim in respect of a mental stress injury that took place between April 29, 2014 and January 1, 2018 will have until July 1, 2018 to file a claim, which will be adjudicated under the new mental stress WSIA provisions and new Chronic Mental Stress Operational Policy. April 29, 2014 was the date of Workplace Safety and Insurance Tribunal (WSIAT) Decision 2157/09, which ruled that the statutory and policy exclusions of benefits for chronic mental stress claims is contrary to the *Canadian Charter of Rights and Freedoms*;
- For mental stress claims that were already filed in a timely manner and are still pending before the Workplace Safety and Insurance Board (WSIB) on January 1, 2018 (i.e. the Board has not yet made an operational level or Appeals Branch level decision in respect of the claim), the WSIB will adjudicate the claim pursuant to the new provisions, regardless of the date on which the worker's mental stress occurred;
- If a worker (or a worker's survivor) filed a timely mental stress claim and their timely appeal is filed with or is pending before the WSIAT as of January 1, 2018, the WSIAT will refer the claim back to the WSIB to re-adjudicate the claim pursuant to the new provisions, regardless of the date on which the worker's mental stress occurred; and
- Outside these transitional rules, workers cannot re-file mental stress claims that were already denied by the WSIB or the WSIAT.

Implications for Employers

Bill 177's transitional rules for mental stress claims arising before January 1, 2018 will have a significant impact on all employers covered by the WSIA whose workers have made mental stress claims or experienced a mental stress injury arising from work within the timelines of the transitional rules.

Notably, there is no limit on the retroactivity of claims or appeals that were filed in a timely manner and are still pending before the WSIB or WSIAT as of January 1, 2018. This change, combined with providing workers with a fresh six month window of time to file claims relating to mental stress injuries that occurred between April 29, 2014 and January 1, 2018, may expose employers to unexpected claims costs for accident years that will impact their experience rating and WSIB costs. For Schedule 2 employers, these additional windows of retroactivity on mental stress claims will be particularly concerning from a

cost perspective.

More generally, the significantly expanded scope of entitlement for mental stress under WSIA will place 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.

Occupational Health and Safety Act (OHSA)

Included in Bill 177 are a number of changes directed at the enforcement of the OHSA.

The most significant proposed change is a drastic increase in the current maximum fines under OHSA from \$25,000 to \$100,000 for individuals and from \$500,000 to \$1,500,000 for corporations.

Additionally, the limitation period for the filing of charges under OHSA would be extended. Currently, a prosecution under OHSA must be instituted within one year of the act of default upon which the prosecution is based. Under the proposed legislation, a prosecution could be commenced within the later of the previous limitation or one year from the date that an inspector becomes aware of the alleged offence. This would extend the limitation period well beyond the current one-year limit and create uncertainty for employers regarding their exposure to prosecution.

Bill 177 would also empower the Deputy Minister of Labour or Assistant Deputy Minister of Labour to establish directives for use by inspectors respecting the interpretation, administration and enforcement of OHSA and its regulations. These directives would be binding on inspectors.

Other changes to OHSA include a new specific duty for employers to notify the Ministry if the workplace health and safety committee or health and safety representative has identified potential structural inadequacies of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, as a source of danger or hazard to workers. The responsible parties for critical injury reporting obligations for project sites, mines, mining plants and other prescribed locations are also clarified.

For more information on Bill 177, please contact [Jodi Gallagher Healy](#) at 519.931.5605, or your [regular Hicks Morley lawyer](#).

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