



HR HealthCheck

Introducing *HR HealthCheck* – Nurses and Presumptive PTSD Entitlement

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Welcome to our first edition of *HR HealthCheck*, a publication geared to issues of specific interest to our clients in the healthcare sector.

We hope you find the information set out below on the new presumptive entitlement for nurses who experience post-traumatic stress disorder (PTSD) helpful and informative. We look forward to bringing you more updates in the future.

New Legislative Landscape

Recent changes to the *Workplace Safety and Insurance Act, 1997* (WSIA) will significantly impact the management of workplace health and safety claims in the healthcare sector.

On January 1, 2018, entitlement to chronic mental stress (CMS) under WSIA came into force. The Workplace Safety and Insurance Board (WSIB) developed Operational Policy 15-03-14 “Chronic Mental Stress Policy” (CMS Policy) in support of this amendment.

On May 8, 2018, a second significant change came into force. Bill 31, *Plan for Care and Opportunity Act (Budget Measures), 2018* amended the WSIA to include “members of the College of Nurses of Ontario who directly provide patient care” in the list of designated workers who will be granted presumptive entitlement for PTSD.

WSIB Operational Policy 15-03-13 “Posttraumatic Stress Disorder in First Responders and Other Designated Workers” (PTSD Policy) has not yet been updated to reflect the changes in the legislation.

The New PTSD Presumption

Entitlement to PTSD by presumption will be granted to members of the College of Nurses of Ontario who directly provide patient care and who meet the following criteria:

- have worked for at least one day in the designated occupation on or after May 8, 2018, **AND**
- have a PTSD diagnosis from a psychologist or psychiatrist

OR

- have stopped working in the occupation on or after May 8, 2018, **AND**

- have a PTSD diagnosis from a psychologist or psychiatrist that was made no later than 24 months after they stopped working in the occupation.

Entitlement to PTSD may be reversed if the employer is able to show that the workplace is not a significant contributing factor to the PTSD diagnosis.

Registered Nurses, Registered Practical Nurses and Nurse Practitioners are all governed by the College of Nurses. There is no definition of nurses who directly provide patient care in the WSIA and it remains to be seen whether the WSIB will interpret this phrase broadly, to include all those who have patient contact, or more narrowly.

Once the PTSD Policy is updated, it may provide additional guidance. In the meantime, employers in the healthcare sector should provide accurate and detailed job descriptions if taking the position that the worker does not provide direct patient care.

Challenges Facing Healthcare Employers

One of the challenges facing healthcare employers is whether the injury falls under the CMS Policy or the PTSD Policy: because the employer cannot ask for a diagnosis, it may not know whether the injury is related to CMS or PTSD until the WSIB renders its initial entitlement decision.

A second challenge is the timing of reporting the injury. The circumstances in which a workplace injury must be reported to the WSIB by the employer are the same for mental health conditions as they are for physical injuries. The employer must report when it becomes aware that a worker is experiencing a mental health condition, that the worker attributes the condition to the workplace and that the worker has sought medical care, lost time or wages, or required modified work for longer than seven calendar days.

However, a worker may not have an immediate reaction to a specific event for PTSD or CMS entitlement to arise, in which case the employer may not be aware that an injury occurred.

For example, a worker who reports to the employer that he has been seeing his doctor because of violent interactions he had with a patient in the Emergency Room several months ago would likely, at that point, trigger the need to complete a Form 7.

A third challenge that these claims present will be around return to work. Workers suffering from PTSD and other mental health conditions may experience cognitive difficulties and require restrictions relating to patient contact, contact with other employees or working in a particular location. To increase the chances of a successful return to work, and to decrease claim costs, employers should keep in mind the cognitive difficulties associated with different tasks and be open to different types of modifications to existing roles.

Closely monitoring claims for CMS and PTSD will allow employers to:

- determine how WSIB case managers are interpreting the language of these two new entitlements
- examine the underlying medical documentation to ensure that decisions are backed by the evidence in the file
- ensure that the appropriate diagnosis was provided by the correct healthcare provider
- examine the course of treatment to ensure that there is progress and that the WSIB is involved appropriately
- review the potential for return to work, and begin searching for suitable modified work.

It should be noted that claims that were already before the WSIB when the PTSD amendment came into force will be reconsidered for presumptive entitlement in the following cases:

- if a worker previously made a claim for benefits for PTSD and the WSIB had not yet reached a final decision
- if a worker previously made a claim for benefits for PTSD and the claim was pending before the Workplace Safety and

Insurance Appeals Tribunal.

There are transitional provisions for the CMS entitlement as well.

Going Forward

Healthcare employers must be mindful of the new presumptive entitlement and the new CMS Policy. Employers may want to consider identifying the most susceptible groups and providing them with additional support. Managers and human resources personnel who regularly interact with these groups may benefit from training on how to identify workplace injuries in the context of the new policies and how to support workers with mental health conditions as they reintegrate back into the workplace.

If you have any questions about these changes to the WSIA and how they may impact your workplace, please contact [your regular Hicks Morley lawyer](#).

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