

Workers Will Soon be Entitled to Benefits for Chronic Mental Stress

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Bill 127, The Stronger, Healthier Ontario Act (Budget Measures), and what it means for the Workplace Safety and Insurance Act

Bill 127, Stronger, Healthier Ontario Act (Budget Measures) 2017, was quickly passed in the Legislative Assembly of Ontario on May 17, 2017. Bill 127 included several changes to the Workplace Safety Insurance Act (“WSIA” or the “Act”), including:

1. giving the Workplace Safety and Insurance Board (the “WSIB”) the power to establish policies concerning the interpretation and application of the Act, concerning the evidentiary requirements for establishing entitlement and concerning the adjudicative principles to be applied to determine entitlement;
2. some new rules for the method of determining the amount of payments for full and partial loss of earnings; and
3. most importantly, entitlement will now be allowed for workers suffering from chronic mental stress arising out of and in the course of their employment.

The WSIA, in section 13(5), previously provided entitlement to benefits only for workers who had an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of their employment. WSIB Policy 15-03-02 provided that in order to be entitled to benefits the event needed to be clearly and precisely identifiable and objectively traumatic. The WSIB did allow for entitlement for the cumulative effect of traumatic events, if a worker had an acute reaction to the most recent of a series of traumatic events, even if the worker had been able to tolerate similar traumatic events in the past. However, the employee still had to be able to demonstrate a final reaction to a series of sudden and traumatic events. Otherwise, workers were not allowed entitlement for mental stress under section 13(4) of the WSIA.

Previous WSIAAT decisions No. 2157/09 (2014), No. 1945/10 (2015) and No. 665/10 (2016) had found that section 13(4) and (5) of the Act were in violation of the Charter of Rights and Freedoms. These new changes now enacted in Bill 127 to section 13(4) and (5) of the WSIA will bring the WSIA in line with these decisions of the Tribunal. The amendments to s. 13 (4) and (5) will come in to force as of January 1, 2018 and will apply only to accidents occurring after January 1, 2018. As of then, section 13(4) will provide that workers will be entitled to benefits for chronic or traumatic mental stress as long as it arises out of and in the course of employment.

One thing that is not changing with the new amendments is that workers will not be entitled to benefits for mental stress caused by decisions or actions of the worker's employer relating to their employment, such as decisions to change the work performed, working conditions, to discipline a worker or to terminate their employment.

The WSIB has already created a new draft Policy 15-03-14 to deal with Traumatic or Chronic Stress Accidents on or after January 1, 2018. This draft Policy will be the subject of Consultation throughout July 2017. This draft policy provides that entitlement for chronic mental stress will be allowed if the "mental stress is caused by a substantial work-related stressor, including workplace bullying or harassment, arising out of and in the course of employment." The draft Policy provides that "a work-related stressor will generally be considered substantial if it is excessive in intensity and/or duration in comparison to the normal pressures and tensions experienced by workers in similar circumstances." The draft Policy also provides that "interpersonal conflicts between a worker and his or her supervisors, coworkers, or customers are not generally considered substantial work-related stressors unless the conflict results in behavior that is threatening or abusive, or unless the conflict generates conduct which amounts to workplace bullying or harassment." The worker community is upset that these changes are only going to apply to accidents after January 1, 2018 and want these changes to apply retroactively to prior claims as well. They will also be arguing for this draft Policy to be revised to interpret these new changes as broadly as possible.

These changes to the WSIA to allow entitlement for chronic mental stress will open the door to substantial additional WSIB claims. All workers who feel they are suffering from mental stress arising out of their employment will now be filing claims after January 1, 2018. It will be necessary to document all conflicts in the workplace and to carefully investigate and take action in situations where you suspect bullying or harassment to avoid claims being established. As with other psychological claims it will be difficult to determine whether the workers psychological condition (i.e. stress) is caused by the workplace or as a result of other stressors experienced outside of work. These claims will be difficult to defend and it will be important to keep detailed records. You may also want to consider conducting training with your supervisors and workers on workplace bullying and harassment to ensure they are aware of what is inappropriate conduct and taking action to correct it.

If you have any questions or concerns, please contact Stephen Roberts at: 519-255-4370 or sroberts@mctaguelaw.com.

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