

**WORK SAFE. FOR LIFE.**  
WORKERS' COMPENSATION BOARD OF NOVA SCOTIA

**Supplemental Information:  
WCB Nova Scotia Psychological Injury Policy**

**July 2024**

The document is intended to supplement the information contained in the paper entitled: “New Psychological Injury Policy: Final Policy Decision and Supporting Rationale.” In this paper you will find a version of the new policy that identifies the specific changes made to the draft policy that was consulted on from November 17, 2023, until March 1, 2024. These changes were made after consideration of feedback received from stakeholders and further WCB review of the policy and represent the final wording of the new policy. Deletions in the policy are represented by ~~strikeouts~~ and additions by **bold and underline**. To view the final policy without the markups, please see Appendix A of the paper “New Psychological Injury Policy: Final Policy Decision and Supporting Rationale.”

This document also includes a detailed overview of stakeholder feedback. However, it is intended to be representative of the feedback received and does not contain every comment received. Please be assured the WCB reviewed all submissions as part of the development of the final policy.

## Final Psychological Injury Policy with ~~strike-outs~~ and additions

### Policy Number: 1.3.10 - Psychological Injury

Topic: Psychological Injury

Section: Entitlement

Subsection: General

Effective: September 1, 2024

Issued: TBD

Approved by Board of Directors: TBD

#### Preamble

~~Mental stress is a commonly used term that describes an individual's non-specific physical and psychological response to the events, changes, or interactions that occur throughout our lives. These experiences are known as stressors. We all experience some level of stress in our lives. However, sometimes a person's ability to cope with stress is overwhelmed. This can lead to distress, a negative form of mental stress, that may result in diagnosable psychological injuries. Just like physical injuries, work-related psychological injuries may be eligible for compensation under the Workers' Compensation Act (the "Act"). In particular, the Act covers psychological injuries resulting from gradual onset or traumatic mental stress.~~

~~Psychological injuries may be the result of a number of contributing factors, some which may be work-related and some which may not be work-related. To be eligible for compensation, Section 10J(1) of the Act requires that psychological injuries resulting from mental stress arise out of and in the course of a worker's employment and be wholly or predominantly caused by one or more (or a cumulative series) of significant work-related stressors.~~

~~A worker is not entitled to compensation for mental stress caused by: 1) one or more interpersonal conflicts (other than workplace harassment or bullying) arising out of and in the course of employment; or 2) a decision or action of the worker's employer relating to the worker's employment.~~

~~This policy sets out criteria and guidance for the adjudication of psychological injury claims resulting from work-related gradual onset or traumatic mental stress.~~

~~NOTE: Throughout the remainder of the policy the phrase "mental stress" refers to both gradual onset and traumatic stress unless otherwise indicated.~~

**Some level of mental stress is endemic to life and work, and in most cases does not constitute a work-related injury covered by the Workers' Compensation Act (the "Act"). Workers are entitled to compensation for psychological injuries in the form of gradual onset or traumatic stress if the stress: 1) arises out of and in the course of employment; and 2) is wholly or predominantly caused by one or more, or a cumulative series of, significant work-related stressors.**

**A worker is not entitled to compensation for psychological injuries in the form of gradual onset or traumatic mental stress caused by 1) work-related interpersonal conflicts (other than workplace harassment or bullying); or 2) a decision or action of the worker's employer relating to the worker's employment.**

**This policy sets out criteria and guidance for the adjudication of claims for psychological injuries for work-related gradual onset or traumatic mental stress.**

## Definitions

“DSM” means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

**“gradual onset stress” is mental stress that is a response to experiencing a single significant or a course, or series, of non-traumatic events over time.**

**“workplace harassment or bullying” means a single significant occurrence or a course of repeated occurrences of objectionable or unwelcome conduct, comment or action in the workplace that, whether intended or not, degrades, intimidates or threatens, and includes all of the following, but does not include any action taken by an employer or supervisor relating to the management and direction of a worker or the workplace:**

- (i) **workplace harassment or bullying that is based on any personal characteristic, including, but not limited to, a characteristic referred to in clauses 5(1)(h) to (v) of the *Human Rights Act*,**
- (ii) **inappropriate sexual conduct, including, but not limited to, sexual solicitation or advances, sexually suggestive remarks or gestures, circulating or sharing inappropriate images or unwanted physical contact.**

**“mental stress” is an individual’s non-specific physical and psychological responses to the events or changes that occur in a person’s life that result in a diagnosed psychological injury, using the DSM. Compensable mental stress is either gradual onset or traumatic mental stress.**

“Significant work-related stressor” is a work-related stressor that is generally considered ~~excessive-~~ **significant** in intensity and/or duration in comparison to the normal pressures, tensions or events experienced by workers in similar circumstances. Examples of significant work-related stressors include, but are not limited to, personal experience of, or directly witnessing, a work-related traumatic event or experiencing workplace harassment or bullying. **The WCB may consider other stressors to be significant work-related stressors where the stressor has lasted for an extended period of time, arises from incidents or actions that are serious and egregious in nature, and are beyond the normal pressures and tensions of employment (see Section 6.2).**

“traumatic event” means an event that:

- is sudden;
- is frightening or shocking;
- is specific to a time and place; and
- involves actual or threatened death, or serious injury, to oneself or others; ~~or threat to one’s physical integrity.~~

Examples of traumatic events include, but are not limited to, the following:

- A direct personal experience of an event that involves actual or threatened death or serious injury;
- An actual or threatened violent physical assault;
- Witnessing or experiencing a horrific accident;
- Witnessing or being involved in a hostage taking;
- Witnessing or being involved in an armed robbery.

**“traumatic stress” is mental stress that is a response to experiencing or witnessing a traumatic event.**

~~“Workplace harassment or bullying” means objectional or unwelcome conduct, comment, bullying or action that, whether intended or not, humiliates, offends, degrades or threatens. It may be directed at a particular person or group, or directed at no person in particular but creates an intimidating or offensive work environment. It includes, but is not limited to, discrimination based on any of the protected characteristics as set out in the Nova Scotia Human Rights Act.~~

## **1. Scope**

### **1.1 Psychological injuries caused by mental stress only**

This policy applies to ~~initial entitlement of~~ psychological injury claims resulting from work related mental stress. The policy does not apply to psychological injuries that ~~are secondary injuries associated with an initial physical injury.~~ **arise as a consequence of a physical injury.**

~~Two types of work-related mental stress are eligible for compensation under the Act:~~

- Gradual onset stress
- Traumatic stress

### **1.2 PTSD presumption**

Notwithstanding the criteria in this policy, a claim for a psychological injury that is post-traumatic stress disorder (PTSD) by a frontline or emergency response worker will be adjudicated under Section 12A of the *Act* and Sections 40–45 of the Workers’ Compensation General Regulations.

*References: Workers’ Compensation Act (Chapter 10, Acts of 1994-95), Section 2(a), 10J(9), 12A(7A).*

## **2. General Criteria for compensable psychological injuries**

Claims for psychological injury ~~in response to being exposed to work-related mental stress~~ **in the form of gradual onset or traumatic mental stress** are eligible for compensation when all of the following criteria are met:

- The injury arose out of and in the course of the worker’s employment. See *Policy 1.3.7R – General Entitlement – Arising out of and in the Course of Employment* for guidance on determining if an injury arose out of and in the course of employment.

- There is a psychological injury diagnosis made in accordance with the DSM. **The diagnosis must be made** by a health care provider being either a psychiatrist or a clinically trained psychologist registered with the Nova Scotia Board of Examiners in Psychology **or equivalent body in Canada;**

- The work-related stressors causing the mental stress are not **due to**\*:
  - interpersonal conflicts (except for workplace harassment or bullying); or
  - actions or decision of the employer relating to the worker’s employment;

- The injury is wholly or predominantly caused by one or more significant work-related stressors, or cumulative series of significant work-related stressors.
  - ~~For traumatic mental stress, the worker had direct personal experience of (or directly witnessed) one or more, or a cumulative series of, traumatic events.~~
  - ~~For gradual onset stress, the worker experienced one or more, or a cumulative series of, significant work-related stressors that are not otherwise considered a traumatic event(s) as described in this policy.~~

- The WCB decision maker is able to identify the event(s) which are claimed to have caused the mental stress. ~~This will be done by considering information from a variety of sources, including but not limited to, the worker, health care professionals, co-workers, and the worker’s supervisory staff.~~

**As specified in Section 10(J)(1)(b), claims that meet these criteria and are accepted by the WCB are not subject to apportionment of benefits. Therefore, Policy 3.9.11R2 - Apportionment of Benefits does not apply to these claims.**

\*See Section 4 **6.** for more information on these exclusions.

*References: Workers’ Compensation Act (Chapter 10, Acts of 1994-95), Section 2(a), 10(J)(1) and (2).*

### **3. Significant work-related stressor**

**In determining whether pressures, tensions or events are significant work-related stressors, the WCB will consider the worker’s subjective response to the stressor. However, this question is not determined solely by the worker’s subjective belief about the event or stressor. It involves both subjective and objective analysis.**

*References: Workers’ Compensation Act (Chapter 10, Acts of 1994-95), Section 2(a), 10(J)(1)(b).*

### **3. 4. Predominant cause**

If a psychological injury resulting from mental stress is causally linked to multiple stressors (both work-related and non-work related), the significant work-related stressor(s) will be considered the predominant cause(s) when they ~~outweigh all other stressor(s) combined (i.e. 51%).~~ **are the primary or main cause.**

To ensure consistency, the WCB will continue to use the predominant cause test when determining ongoing entitlement to compensation. As an example, Temporary Earnings Replacement Benefits (TERB) would continue to be paid as long as the evidence shows

that the significant work-related stressor(s) is the predominant cause of the worker's inability to work.

*References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 2(a), 10(J)(1)(b).*

## **5. Identifying Events**

**The work-related stressors that lead a worker to file a claim for compensation for work-related psychological injury must be reasonably confirmed through information verifying that the work-related stressors have occurred.**

This will be done by **gathering** and considering information from a variety of sources, including but not limited to, **the results of a WCB investigation, interviews and/or statements from** the worker, co-workers, health care professionals, the worker's supervisory staff, **the employer**, and **members of the public**.

**Many workplaces have internal processes for investigating harassment or bullying allegations. The WCB will review all information submitted by workers and employers (including investigation findings) and consider all evidence identified during the decision-making process.**

**References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 2(a), 10(4), 10(J)(2)(a) and (b), 109, 129.**

## **4.6. Exclusions**

### **4.6.1 Interpersonal conflicts**

Interpersonal conflicts between workers and their supervisors, co-workers, or customers are generally considered to be a typical feature of employment. A worker is not entitled to compensation if it is shown that a worker's mental stress was caused by one or more interpersonal conflicts arising out of and in the course of employment, unless it amounts to workplace harassment or bullying.

### **4.6.2 Employer decisions and actions relating to a worker's employment**

~~Actions taken by an employer relating to management of work and employees are considered a normal part of employment. A worker is not entitled to compensation if it is shown that a worker's psychological injury resulting from mental stress was caused by a decision or action of the employer relating to the worker's employment, including, but not limited to, a decision to:~~

- ~~• change the work to be performed or the working conditions. Examples include: transfer to a new location, changes in working hours, productivity expectations, physical layout of the workplace, change of reporting structure.~~
- ~~• discipline the worker. Examples include: demotion, probation, or suspension.~~
- ~~• terminate the worker's employment. Examples include: lay-off (temporary or permanent), termination for cause, or non-renewal of contract.~~

**It is a normal part of employment for employers to make decisions and take actions to manage the workplace. A worker is not entitled to compensation if it is shown that a worker's gradual onset or traumatic mental stress results from decisions or actions of the employer relating to the work or the worker's employment. This includes, but is not limited to:**

- **changing the work to be performed or the working conditions**
- **changes in working hours**
- **changes in workload, productivity expectations, or deadlines**
- **transfer to a new location**
- **changes in role (e.g. promotion)**
- **change of reporting structure**
- **changing the physical layout of the workplace**
- **performance evaluation discussions and/or performance corrective actions**
- **disciplining the worker (e.g. demotion, probation, or suspension)**
- **lay-off (temporary or permanent), termination for cause, or non-renewal of contract.**

*References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 2(a), 10(J)(2)(a) and (b).*

#### **5. 7. Final mental stress decisions before September 1, 2024**

If a worker filed a claim for entitlement to benefits for gradual onset or traumatic mental stress and the claim was denied by the WCB and either not appealed to the Workers' Compensation Appeals Tribunal, or appealed and denied by the Appeals Tribunal, before September 1, 2024, the worker may not refile the claim under Section 10J of the Act.

*References: Workers' Compensation Act (Chapter 10, Acts of 1994-95), Section 10(J)(3).*

#### **Application**

This policy applies to all decisions made on or after September 1, 2024.



## Overview of Stakeholder Feedback

The WCB received 39 submissions from stakeholders. Of the submissions, 28 were from employer associations and individual employers, 5 from injured worker associations, unions or worker associations, and 4 from individual injured workers. The WCB also received a submission from an educational institution and a member of the public. We thank everyone for their submission. It takes a great deal of time and thought to provide feedback in response to consultation on an issue as complex as psychological injury – particularly gradual psychological injury. Given their claim specific and personal nature, we have not included any details of the individual injured work submissions in this overview.

The following is an overview of the feedback.

### Injured workers' association, worker organization, and labour organizations

- Constitutionality of revisions to the Act
  - The legislation is unconstitutional and discriminates against workers with psychological injuries.
  - The clause "notwithstanding subsection 10(5)" at Section 10J(1) (b) is likely discriminatory and contrary to section 15(1) of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act , 1982.
  - The elimination of apportionment between compensable and non-compensable factors draws a distinction based upon mental disability and may establish differential treatment to injured workers with psychological injuries as compared to those with physical injuries.
- Pre-existing conditions
  - The policy must clarify that pre-existing conditions are not a consideration in the causation of a subsequent psychological injury, and that pre-existing conditions are not a bar to claim.
  - We are concerned that decision makers will consider pre-existing psychological conditions as a reason to deny a claim. Many injured workers have pre-existing psychological conditions that are well managed and are not disabling.
- Scope of the policy
  - Some stakeholders support having the scope statement in the policy. This will prevent common adjudicative errors when considering secondary injuries and psychological injuries.
  - If a separate policy is being contemplated to address such secondary injuries, actions should be taken immediately to ensure the policy can be in force by September 1, 2024 . If not , a section of this policy should be included to address the secondary injuries.
  - The policy must cover bullying and harassment from WCB staff and service providers which results in psychological harm.
- Harassment or bullying
  - Strongly support this definition of harassment and bullying. The definition clarifies that harassment and bullying need not be intended to humiliate, offend,

- degrade, or threaten - it is the impact of harassment and bullying that causes injury.
- The definition clarifies that harassment and bullying need not be directed at a particular person or group. Harassment and bullying often occurs in generalized, subtle and ambiguous ways.
  - We are pleased the definition makes no requirement for a pattern of or repeated behaviours. A single episode of harassment or bullying can result in injury.
  - The policy would benefit by the addition of examples to further guide decision makers in its implementation. The Canadian Centre for Occupational Health and Safety identifies examples of violence and harassment.
- Traumatic event
    - Do not believe there should be a definition of “traumatic event” in the policy because the legislation no longer refers to traumatic events.
    - Nothing in the Act requires direct personal experience for traumatic stress. The policy should not be introducing something not required by legislation. The standard test of having a personal injury by accident arising out of and in the course of employment is the only test authorized by the Act.
    - The test for coverage of traumatic stress is the same as the test for gradual onset stress – the worker must experience a significant work-related stressor. It is no longer relevant to the adjudication of claims for psychological injury and should be removed from the policy.
  - Significant work-related stressor
    - We do not support the definition of “significant work-related stressor”. While the definition is consistent with those used in other jurisdictions it is not consistent with the meaning of the word “significant” or with the existing legal interpretation of the word in the workers’ compensation system. It means more than “more than trivial” and this should be used rather than the word “excessive.”
    - The definition reintroduces the voluntary assumption of risk for workers and the definition is discriminatory. Workers should not accept the notion that they are not entitled to compensation if they are injured by stressors considered “normal” in their work.
    - It sets a standard for psychological injuries that is higher than the standard for physical injuries and it is outside of the Board’s authority to introduce an additional standard – one that the legislature did not explicitly contemplate - into the Policy.
  - Predominant cause
    - The definition of “predominant cause” is inconsistent with the plain reading of the statute. It is also not consistent with common dictionary definition.
    - The statement that the predominant cause test applies to ongoing earnings replacement or other benefits must be removed. There is no legal basis to this statement. This does nothing to ensure consistency, and in fact ensures the opposite. This statement is discriminatory, contrary to established workers’ compensation law, and contradicts existing policies. The legislature did not alter any section of the Act relating to benefit entitlement.
  - Identifying events
    - The requirement to identify events should be removed or examples of identifiable events included. If the requirement to “identify the event” is intended to distinguish between an event that actually occurred and an anticipated event, (for example, being held-up as opposed to fearing being held-up), then the Policy

should simply state this clearly. The policy must also be clear that a “near miss” can be considered an “identifiable event”.

- There is no need to advise a decision maker on what information to consider in their investigations. These instructions suggest there is a greater standard of proof for mental stress claims than there is for physical injury claims.
- Exclusions
  - It should be clear that employers are not protected from the prohibition on harassment and bullying just because it takes place in the context of a “decision or action relating to the worker’s employment”. This approach has been confirmed many times in the jurisprudence of jurisdictions with the identical legislated exclusion.
  - Psychological harm caused by an employer's actions or decisions that include bullying or harassment must be compensable . Decisions related to a worker's employment can be made in a professional manner.
  - Employers must not be given any “free ride” from the prohibition on harassment and bullying only because it takes place in the context of a “decision or action relating to the worker’s employment”.
  - One can imagine a number of scenarios where bullying or harassment can still occur while making decisions or taking actions against a worker. The exclusion of an employer’s decisions or actions relating to employment is not limitless and such decisions or actions may possibly be considered work-related stressors.
- Effective date of the legislation
  - The WCB acted in bad faith by continuing to deny gradual onset stress claims without informing injured worker claimants the gradual onset stress exclusion was found to violate the Charter. The Board should have taken the same approach as WCAT and hold all decisions relating to gradual onset stress in abeyance pending the legislative and policy changes.
  - The WCB has legislative authority to correct this wrongdoing. Section 185 grants the Board with authority to confirm , vary or reverse any decision, order or ruling made by the Board. All case management and hearing officer decisions made since the WCAT decision of September 11, 2019 should be rescinded and the adjudication of the claims be held in abeyance pending the coming into force of the amended legislation on September 1, 2024 .

### Employers and employer organizations

- Consultation process
  - It is our hope that the Board will consider our areas of concern .... and that it will commit to further consultation with employers across the province ahead of the policy launch on September 1, 2024.
  - More time for meaningful consultation ahead of significant changes to policy with Employers is encouraged to begin well ahead of implementation of changes in the future.
- Scope of the policy
  - Pleased to see this distinction between psych only injuries and psych that develops due to a physical injury.
- Inherently stressful jobs
  - Employees will make claims for the stress that “comes with the job”.

- From the employers' perspective, a clear definition of "normal" is necessary. Caregiving is inherently stressful and one should expect times of high stress. It must be recognized that this is a normal condition of work, very much unlike other sectors of the workforce.
- When determining if a worker is entitled to traumatic or gradual stress will the decision on acceptance of the claim look at the workers regular duties that would notably involve a high degree of routine stress.
- Consideration in this should be given to if events are uncommon with respect to the inherent risks of an occupation in the thresholds for assessment as have been the case in other jurisdictions.
- Our industry is unique and policy must recognize that.
- WCB readiness
  - The inefficiencies of the WCB claims process must be improved to provide reduced claim times.
  - What are WCB's intended strategies for managing the anticipated increase in claims? Specifically, are there plans to recruit additional specialized staff to handle the additional claims efficiently? How does WCB intend to ensure that specialized professionals are adequately trained and prepared by the intended deadline of September 1,2024?
  - The general consensus ... is that WCB is not able to handle the case load they now, so how will they be equipped to handle additional types of claims?
  - The Province must ensure the availability of psychiatrists and psychologists to address the needs of Nova Scotians (work-related and non-work related).
- Identifying events
  - This section refers to the "WCB decision maker is able to identify events" .... why is the employer not listed as one of the sources they are gathering information from? Need to list "employer" specifically.
- Diagnosis
  - Clearly define who can provide a diagnosis and what evidence needs to be presented, which is currently missing from the proposed NS policy.
  - A Mental Health Assessment is critical to understanding the psychological diagnoses, treatment, and a return-to-work plan. Possibly the following could be added. Mental Health Assessment (MHS) is a psychological evaluation completed by a Workers Compensation Board (WCB) accredited psychologist or psychiatrist.
  - As of January 1,2024, the WCB Safety Certified Audit has expanded to include a Return-to-Work element. The Mental Health Assessment needs to be included to ensure that organizations can meet the criteria for their Return-To-Work Program. A return-to-work plan for work-related mental stress is just as important to have in place as a physical injury plan.
  - If there are significant concerns regarding the validity of the diagnosis and/or work-relatedness of the diagnosis, we recommend that that there is an option in place for the WCB decision maker to refer the file for an independent and impartial medical assessment by a specialist in psychiatry.
- Significant work-related stressor
  - Term is vague. The vagueness of such terminology leaves considerable room for interpretation, raising concerns about the consistency and fairness of decision- making processes.
  - Add "professions"

- When determining whether an event is traumatic or gradual the policy needs to indicate that both subjective and objective analysis will be factored into the decision-making process.
- Clarifying terminology would be helpful. You can have traumatic (acute) or gradual (chronic) stressors, and immediate vs. longer-term responses to these stressors. The psychological responses, per se, can be similar in both acute and chronic situations (the document correctly defines it as non-specific physical and psychological responses).
- The definition of gradual onset stress includes the phrase that it is 'non-traumatic in nature'. Although we understand this wording is probably being used to differentiate it from traumatic (acute) stressors, it may create confusion, as chronic stressors (gradual onset) can indeed create traumatic responses (such as defined by the DSM-5). If they didn't create these traumatic responses, they wouldn't be eligible for compensation.
- I appreciate the framework is based on the definition of "traumatic" vs "gradual onset". However, when phrasing it in that way ...it appears to imply that a gradual onset is non-traumatic, which someone could argue, on the contrary, how traumatic and debilitating this is.
- I think the policy is trying to make the distinction that, for traumatic stress, the injured worker can either experience it directly, or witness an event. While for Gradual Onset Stress, the injured worker must experience harassment or bullying (but not simply witness it happening to someone else); If that's the case, I think the language could be clarified.
- Clear language on how internal employer investigation reports will be considered in the adjudication and return to work/accommodation processes is required.
- Traumatic event
  - The Traumatic Event meaning in the draft policy is not a definition. In the draft policy it describes what types of traumatic events.
  - Terms such as sudden, frightening, or shocking etc. can be interpreted differently by individuals. Defining traumatic event will give more understanding of the policy. The definition that Saskatchewan Workers Compensation Board used would be a better fit: Traumatic Event, a single or series of events or incidents that arose out of and in the course of employment that may result in a psychological injury.
- Harassment or bullying
  - Should align with any legislated definition that is put in place. It would be very helpful to have the terms "bullying" and "harassment" defined before the effective date of the policy.
  - Definition of workplace bullying and harassment is not clearly defined. It would appear from the definition that if anyone within the workplace is uncomfortable about any situation, which they may consider intimidating or offensive, there is an opportunity for that employee to file a claim against the employer for gradual onset stress.
  - If we are to define in the policy that psychological injuries caused by harassment or bullying are compensable, it would benefit if the meaning of harassment and bullying are separated.
  - Harassment or bullying is usually defined as a course of conduct.
  - The policy needs to include the criteria to determine a compensable harassment or bullying claim that would involve both a subjective and objective analysis.

- It would also benefit employers, employees, and caseworkers if harassment or bullying is to be compensable, the instances must be of sufficient severity that a reasonable person would suffer an injury. Leaving what is in the draft policy is extremely vague and would be open to an individual caseworkers' interpretation.
- Who determines/makes the distinction regarding whether the interpersonal conflict constitutes harassment and/or bullying? What evidence is used to make that distinction (ie: is it solely the information reported by the injured worker? Must a formal complaint have been filed? Must there have been a workplace investigation into the allegations, and if so, what weight does the outcome of the investigation carry?)
- If the intention is to cover other sources of gradual onset stress, they must be clearly identified. Otherwise must say "Gradual onset stress as a result of workplace harassment or bullying" is compensable.
- Predominantly caused
  - Term is vague. The vagueness of such terminology leaves considerable room for interpretation, raising concerns about the consistency and fairness of decision- making processes.
  - The words "wholly or predominantly" caused by work related stressors may be misleading to employers: wholly: to the full or entire extent, completely, etc. predominantly: mostly or mainly.
  - It is unclear which litmus testing the adjudicators will be using to differentiate 51% gradual onset work stress versus 49% personal/life stress, and how the Board will be able to determine what will meet the test of work-related stress.
  - The policy should include the criteria that would be accepted if the employer wishes to dispute the presumption that the compensable psychological injury is the predominate cause.
  - Who will determine the workplace stressors are predominant when non-workplace stressors are also present, and how? Is there/will there be a process or a formula to determine the percentage? And 1% seems a very small amount to be considered 'predominant' for something like this.
  - It almost sounds like time loss for Gradual Onset Stress claims is to be expected, and that TERBs will be approved, the way this is worded. Is that the case? Need criteria addressing when a claim no longer meets the criteria for ongoing entitlement is required.
- Exclusions
  - Interpersonal Conflicts: Consider including concrete examples showing the difference between interpersonal conflict and workplace harassment or bullying.
  - Employer exemptions require more clarity. For instance, will performance management initiatives influence WCB's decisions, particularly concerning an employee's work performance?
  - What about burnout?
  - Add more exemptions (they provide examples from other WCBs' policies)
  - Providing this type of evidence (re terminations etc.) to WCB may result in conflicts regarding privacy concerns (ex. statements from co-workers, who may not authorize release of this information to WCB, as the worker would have access to that information on the claim file. As such, issues regarding privacy and redaction of information are also important to consider.
  - The draft Policy currently states that performance and labor relation issues are non- compensable, but it does not provide further clarity on how performance

and labour relation issues will be managed should a claim be filed, or if a claim is in-part contributed to labor relations/performance concerns.

- Effective date of the legislation
  - Is there potential flexibility regarding the proposed September 1, 2024, implementation date?
  - Section 10(J)(4) – it’s concerning that some cases will be decided under new legislation when the “stress” occurred under the rules of the old legislation.
  - Does this mean that a worker can file a claim for Gradual Onset Stress after 1 Sep '24 even if the alleged stress occurred years before? If that’s the case, will there be consideration given to the possibility the cause of the stress was eliminated?
  - Will former employees or employees on LTD who have resigned/retired/are on alternate leave prior to Sept. 1, 2024, be eligible to submit a new claim?
- Prevention
  - Avoiding injuries of all nature must be the highest priority for all employers and workers in Nova Scotia. Other provinces have implemented legislation to prevent Workplace Violence and Harassment prior to establishing gradual onset psychological injuries as compensable injuries under Workers’ Compensation Systems. This legislation is typically the foundation of Safe and Respectful Workplace policies for employers.
  - In the absence of this legislation in Nova Scotia, education, awareness, and tools for employers to build psychologically safe workplaces will be of even greater importance.
  - Other provinces have already built robust tools to support employers, such as the Psychological Health and Safety Resource Centre from WorkSafe.ca Saskatchewan. These should be quickly deployed for Nova Scotia.
- Costs
  - Costs will increase substantially once the new legislation becomes effective.
  - A cost relief mechanism is needed for claims which are a re-injury from a previous place of employment, or a pre-existing condition. This apportionment should be allowed at the early stages of an accepted claim and when the entitlement transitions to extended wage replacement benefits.
  - Apportionment of claims cost should be allowed.
- Pre-existing conditions
  - How will pre-existing conditions be identified by the assigned/chosen psychologists or psychiatrists if they have no history with the individual filing the complaint?
  - How will employers be protected?
  - Will employers have the opportunity to provide evidence they may have of a pre-existing condition?
- Tools and resources
  - The Province should support employers with the required resources to improve Psychological Health & Safety in the workplace
  - Before implementation on September 1st, WCB should directly communicate and educate small business owners on these new changes and what they will mean for them. Tools such as webinars, in- person town halls, checklists, and templates would be particularly helpful.
  - Tools such as a questionnaire similar to what is on Ontario’s WSIB Work Related Mental Stress page could be one of many tools that help employers and employees understand what is and what is not covered under this new policy.

- Employees also need some education about what this is NOT, will the WCB be doing this?
- Procedures/processes for claim adjudication, claim management and return-to-work
  - The WCB needs to provide details on how claim decisions will be made and how RTW will be managed.
  - Is there any obligation on the employee to seek new employment if the job they are in is causing them too much stress or is not the right fit? When and how much is the employee's ability versus the type of job they are in considered?
  - What happens if the employer handles and removes the problem? Is the employee expected to return to work as the workplace stress has been removed? The threat or stress is no longer present.
  - What might a return-to-work plan look like particularly if harassment/bullying is indicated as the reason for the leave? how would a full investigation take place by WCB, how would remedies be recorded/recommended to ensure a safe return to work, will there be specialists within WCB to do so?
  - What will be the time limits on an employer's requirement to hold a person's job?
  - What guidelines will govern the amount and nature of information employers are entitled to when formulating return-to-work plans?
  - The policy must articulate the adjudicator's role explicitly, in facilitating early return-to-work initiatives for workers in accordance with the return-to-work process.
  - The policy needs to advise under what circumstances it will be necessary to conduct worker/employer/supervisor interviews, who will conduct them, the timelines, the types of information that will be sought, and the expected conduct during interviews.
  - Decision makers within WCB NS will need new processes and skills for reviewing psychological claims to determine the appropriate outcomes.
  - The policy needs to clearly outline all steps as to how WCBNS will weigh and determine whether the alleged claim is personal stress or work-related stress and how they will assess predominant cause.
  - Based on evidence from other jurisdictions that up to 95% of claims are disallowed, there will be a need for employers to understand what information they should provide as a rebuttal of the presumption that the claim arose out of and in the course of the worker's employment.
  - We request that the Board involve employers formally in early review an adjudication of claims, considering internal investigation processes that may be triggered to review concerns, and ensure decision are made to the policy with consistency. In some cases, other benefits (i.e. Short-Term Illness) may be more appropriate, if available.
- Claim filing
  - Employers require more clarity around what triggers their filing obligations for cumulative psychological injuries, and what information from workplace investigations, if applicable, will be required by the Board for adjudication purposes.
  - Does the employer need to be made aware of the stress in advance for the claim to be considered?
  - How does the employer ascertain if it falls under the WCB definition of this and if a report should be filed? For example, an employee may claim that they have gradual onset stress related to workload, presumably in this case, an employer



advises that this is NOT a WCB claim and does not submit a claim. However, what if the Doctor submits a claim?

- I feel that there should be a requirement for the individual to have formally reported to the employer in advance (documented), and the employer given an opportunity to investigate and/or remedy a situation (documented within say a three-month time period).
- Lawsuits/Legal matters
  - Should this policy be enacted, will WCB assume responsibility for addressing lawsuits pertaining to work-related stress?
  - Could employer documents on mental well-being (Ex: notes from a discussion with an employee on their mental health) be subpoenaed for court in related matters?
  - The policy needs to reference how it will identify and determine third party claims.
  - In the event of legal matters, will WCB defer to the employer, or will they rely on internal legal resources?
  - The policy should clearly define how employer or 3rd party investigations will be taken into consideration, and when the WCB will investigate and how that will be operationalized.