

Psychological Injury Policy: Final Policy Decision and Supporting Rationale



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1. INTRODUCTION

On November 9, 2023, changes to the *Workers' Compensation Act* (the "Act") were made by the Nova Scotia Legislature related to mental stress. Prior to these changes, psychological injuries from gradual onset stress were excluded from coverage under the Act. With these recent changes, the Act now allows coverage for psychological injury caused by work-related gradual onset mental stress – typically in the form of workplace harassment or bullying. Psychological injuries caused by traumatic events continue to be covered.

On November 17, 2023, the WCB released a draft psychological injury policy to support implementation of the legislative changes. Due to high interest in the new policy, the initial end date for consultation was extended from February 15th to March 1st. Following the release of the draft policy, the WCB held webinars with stakeholders on January 24th and 25th where over 450 participants were provided with an overview of the new policy and the opportunity to ask questions.

During the consultation period the WCB received 39 submissions from stakeholders including employer

associations and individual employers, injured worker and worker associations and unions, as well as individual injured workers. As evidenced by the high number of submissions, stakeholders are very interested in the topic of psychological injury and in particular gradual onset psychological injury. We understand it takes significant time and effort to participate in consultations like this one and the detailed and thoughtful feedback resulted in several revisions to the policy.

This report concludes policy development on the topic of psychological injury. This report identifies:

- key issues raised during consultation
- the rationale for why the WCB did, or did not, revise the draft policy in response to the submissions received
- the WCB's final policy on Psychological Injury in Appendix A. The new policy will replace the current *Policy 1.3.9 Psychological Injury*; and
- consequential amendments to WCB policies impacted by the changes to the Act and the new Psychological Injury Policy in Appendix B.

2. ISSUES RAISED DURING CONSULTATION

In addition to feedback received directly related to the content and wording of the draft policy (discussed in Section 3 of this paper), the WCB also received a significant amount of feedback on broad topics that won't be specifically addressed in the new policy. This doesn't mean we think these topics are unimportant. Rather, it means we don't believe it is appropriate, or possible, to address them in this particular policy. These topics are discussed below.

► **Requests for details on how the WCB plans to adjudicate and manage return to work (RTW) for gradual onset psychological injury claims**

We understand the desire for information on how the WCB will adjudicate claims and manage RTW for gradual onset psychological injury claims. This is a new type of claim for the WCB and it's natural that employers and workers want to understand how it's all going to work. This is why we have devoted a portion of our website to gradual onset psychological injury. On the site you can get information on the WCB's new team (and new roles) that will be handling these claims, as well a series of Q&As addressing a variety of topics including what is typically covered (and what isn't), and the WCB's preparations for the September 1, 2024 effective date. Additionally, workers and employers can find tools and resources at worksafeforlife.ca to help create a psychologically healthy and safe workplace; and the WCB has held a series of webinars on a variety of topics related to gradual onset psychological injury. These webinars will continue as demand requires.

► **Concerns about claims costs and pre-existing conditions**

Many employer submissions highlighted claims costs as a concern – current costs and anticipated costs of gradual onset psychological injury claims. In particular, employers requested “cost relief” for claims that have pre-existing conditions. Workers and labour also highlighted pre-existing conditions

in their submissions, recommending that the policy make it clear that having a pre-existing psychological condition does not bar a worker from making a WCB psychological injury claim.

It's obvious the topic of pre-existing conditions is important to our stakeholders. Consistent with all WCBs in Canada and legal precedent, a worker with a pre-existing condition of any type (physical or psychological) is not barred from making a WCB claim. If work worsens that pre-existing condition, it may be a compensable work-related injury. Regarding claims costs, the WCB's legislative and policy framework does not currently provide for cost relief. While other jurisdictions can consider cost relief in particular situations, (i.e. prolonging of claim), WCB Nova Scotia does not support charging the overall accident fund for an individual employer's claim costs.

► **Requests to change the Act, or concerns about the legality/constitutionality of the recent changes to the Act.**

Both employer and worker/labour stakeholders expressed concerns about the mental stress provisions in the Act. For example, some employer and worker/labour stakeholders requested that psychological injury claims be subject to apportionment, and workers/labour argued the new requirements are unconstitutional. It was also requested that the legislation be applied retroactively to some final decisions, and that the implementation of the new Act requirements be delayed.

The WCB's policy must be consistent with the legislation. The Act is clear that apportionment does not apply to mental stress claims. Also, in the absence of express language in the legislation indicating that the new requirements are to apply retroactively or are effective on a different date, the WCB cannot change the implementation date or impose retroactive application by policy.

3. STAKEHOLDER FEEDBACK, ANALYSIS & RESPONSE

The WCB received 39 submissions from stakeholders. Of the submissions, 28 were from employer associations and individual employers, 5 from injured worker/worker associations and unions, and 4 from individual injured workers. The WCB also received a submission from an educational institution and a member of the public.

After considering the feedback received, and further review by the WCB, changes have been made to the policy to improve clarity of intent and ensure consistency with the Act. Key changes are:

- Changing the title of the policy
- Streamlining the preamble
- Clarifying and adding definitions
- Changing the order and title of some sections, as well as fixing grammar and phrasing
- Changing the diagnosis section to allow for psychologists and psychiatrists from outside the province to provide diagnoses
- Clarifying that the WCB will consider the results of investigation reports in decision making

In this section we will review the central themes that emerged during the policy consultation, and the WCB's responses. The key themes discussed in this document are the topics raised by multiple stakeholders in their submissions or topics that the WCB believes needed further review and amendment. While it does not capture every individual issue raised by every stakeholder, all feedback submitted by stakeholders was reviewed and carefully considered by the WCB. An overview of the feedback can be found in a separate document, [“Supplemental Information: WCB Nova Scotia’s Psychological Injury Policy.”](#)

1

SCOPE OF THE POLICY

Employers and workers were generally pleased that the policy made it clear that it applies only to claims for psychological injuries caused by work-related gradual onset and traumatic mental stress. The WCB did, however, receive requests (primarily from employers) to address additional topics and issues in the policy. The topics included:

- Roles and responsibilities of workplace parties (ranging from claim filing to RTW)
- Injury prevention
- Secondary injuries
- Claim objections and appeals
- Third-party claims
- Permanent Medical Impairments (PMIs)
- Privacy of information
- Decision making

WCB Response

The topics listed above are of general application to all types of injuries – not just psychological injuries. Also, some of the topics already have policy (e.g. appeals, PMIs). The scope statement in the policy was included to make it clear this policy applies only to psychological injury claims, independent of a physical injury. We believe including requirements related to other topics, particularly those that are applicable to all injury types and/or are already covered by policy, would be confusing and detract from the focus of the policy. Therefore, no changes have been made to the policy to include these topics.

We have made changes to streamline the scope statement and remove the phrase “secondary injuries” because it may be confusing for those unfamiliar with the term. The sentence now reads “The policy does not apply to psychological injuries that arise as a consequence of a physical injury.” The intent of the statement remains the same.

Finally, the title of the policy has been changed to “Psychological Injury.” This is the title of the current policy and we believe it best reflects the policy content.

2 MENTAL, GRADUAL ONSET, AND TRAUMATIC STRESS

In reviewing the submissions, it became evident the policy didn’t adequately explain what is meant by the terms “mental stress”, “gradual onset stress” and “traumatic stress” in the context of the legislation and policy. For example, it was pointed out that being harassed or bullied can be very traumatic, but the policy seems to imply that only experiencing a “traumatic event” is traumatic. It was also noted that it might not be clear in the policy that there is a distinction between the nature of the stressor causing the psychological injury (traumatic event vs. gradual onset like harassment or bullying) and the length of time it may take to develop an injury (acute vs over time).

WCB Response

The terms “mental stress”, “gradual onset stress” and “traumatic stress” in the Act and policy refer to the “what” of psychological injury. That is, they describe the injury types covered by the Act. They do not refer to the nature of a worker’s response to a stressor (trauma) or the length of time it takes to develop a psychological injury.

To clarify the meaning of the terms, we have added definitions in the policy. By adding a definition of “mental stress” we have clarified that it is a personal injury in the form of a diagnosed psychological injury as per the DSM, and that it includes gradual onset stress and traumatic stress. The term “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; and “traumatic stress” is mental stress that is a response to experiencing or witnessing a traumatic event(s). These definitions do not change the intent of application of the legislation or policy, rather they clarify the meaning of the terms in the context of the Act and policy. Phrasing throughout the policy has been updated to reflect these definitions.

3 SIGNIFICANT WORK-RELATED STRESSOR

Employers expressed concern that the definition of significant work-related stressor (SWS) was too vague and that claims could be made for psychological injuries for stress that “comes with the job.” To address this, they recommend adding to (or replacing) the phrase “similar circumstances” with other language such as similar “professions” or “occupations.” They also recommended indicating that both subjective and objective analysis will be factored into deciding if a stressor is significant, and asked for clarity on whether harassment or bullying is the only type of non-traumatic SWS that is potentially compensable.

Worker/labour representatives believe the concept and definition of SWS re-introduces the “voluntary assumption of risk rule” that was in place prior to the adoption of the Meredith Principles under which Canadian WCBs now operate. They also believe that the definition is not consistent with the plain meaning of the word “significant”, or with existing legal interpretation of the word in the context of causation in Nova Scotia workers’ compensation system. In particular, they point to the use of the word “excessive.”

WCB Response

The SWS definition is intended to be an objective test that is attuned to individual worker circumstances that may have relevance for decision-makers. Examples include the type of job or occupation, the nature of the work and the associated work environment, the size of the employer, or industry standards. The WCB agrees that the objective nature of the SWS test could be more explicit and has included language in the policy explaining that WCB decision makers will consider both the worker’s subjective experience, as well as perform an objective analysis to determine if a worker has experienced a SWS. We have also included “occupation” and “profession” in the definition of SWS.

The legislation does allow for stressors other than a traumatic event or workplace harassment or bullying to be considered SWSs. For added clarity we have revised the definition of SWS to clarify that a non-traumatic stressor maybe considered a SWS 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. Considering the legislation and policy, we expect that most compensable claims will result from experiencing a traumatic event or workplace harassment or bullying.

While the Act has been amended to cover gradual onset stress, the foundational requirement in Section 10(1) of the Act continues to apply. It states a worker is entitled to benefits if there is a personal injury by accident arising out of and on the course of employment. This requirement exists to reflect the fact that the Act establishes a scheme that is intended to compensate Nova Scotia workers for accidents and injuries that are caused by work. The SWS requirement in the Act and the definition in the policy recognizes that all workplaces can cause stress, but that the Act is not intended to compensate for that stress absent unusual events or occurrences that could constitute a personal injury. We believe this is consistent with the Meredith Principles.

Regarding the use of the word “excessive” in the definition of SWS, the WCB agrees that its use may not be entirely in keeping with the meaning of the word “significant.” For that reason, we have removed the word “excessive” and replaced it with “significant.” Now, WCB decision makers will consider whether a work-related stressor is “significant in intensity and/or duration in comparison to the normal pressures, tensions or events experienced by workers in similar circumstances, occupations, or professions.”

4

TRAUMATIC EVENT

Both employer and worker/labour stakeholders provided feedback on the definition of “traumatic event.” Some employers believe the definition of “traumatic event” is not clear and suggested

the WCB consider using definitions from other WCBs. There was also a concern that terms in the definition such as “sudden”, “frightening”, or “shocking” can be interpreted differently by individuals.

Some worker/labour stakeholders do not believe there should be a definition of “traumatic event” in the policy because the legislation no longer refers to traumatic events and therefore it is no longer relevant to the adjudication of claims for psychological injury.

WCB Response

The WCB has defined “traumatic stress” to be mental stress that is a response to experiencing or witnessing a traumatic event. This makes it clear that the *Act* continues to cover psychological injuries caused by experiencing or witnessing a work-related traumatic event. The definition in the policy is consistent with the one used for several years in adjudicating psychological injury claims, and WCB continues to believe it is appropriate to define the term in the policy given its key role in the framework for covering psychological injuries.

The long-standing definition of traumatic event used by the WCB is based on the one in the DSM and is consistent with those used in other WCBs in Canada. Except for one change, we believe it is appropriate to continue to use the definition in the policy. To remain consistent with the DSM, we have removed the phrase “or threat to one’s physical integrity.” This phrase was included in the DSM 4 but removed in the DSM 5 due to it being considered “ambiguous.” This is consistent with WCB staff feedback over the years in response to applying the definition to determine if a worker has experienced or witnessed a traumatic event.

5

HARASSMENT OR BULLYING

Worker/labour stakeholders were generally supportive of the definition of harassment or bullying. In particular they were pleased that the definition did not require an intention to do harm, and that it allows for a single episode to potentially be considered harassment or bullying.

Both employer and worker/labour stakeholders expressed a desire for examples to be included in the policy. Worker/labour referenced the Canadian Center for Occupational Health and Safety (CCOHS) website, and the list of examples provided there, as a good source.

Employer stakeholders expressed concern that the definition would allow those uncomfortable about any situation they consider intimidating or offensive, to make a claim – including someone witnessing harassment or bullying in the workplace. It was recommended that the definition acknowledge that harassment or bullying is usually a course of conduct, and that the definition should be consistent with any future occupational health and safety legislation.

WCB Response

Considering the feedback received from stakeholders, additional research, and working collaboratively with Government, the WCB has updated the definition of workplace harassment or bullying to the following:

“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.

We believe this definition of workplace harassment and bullying is better suited for the adjudication of psychological injury claims because its focus is the impact of actions, comments, and conduct on an individual worker. As well, it continues to allow for a single instance of conduct, comment action etc. to be considered harassment or bullying, but clarifies that harassment or bullying is typically a course of conduct. It also acknowledges the particular attributes of sexual harassment or bullying, and clarifies that the definition does not include actions taken by the employer to manage the workplace.

When drafting policy, the WCB considers whether or not including examples in a policy will add clarity or transparency. The WCB does not believe it would appropriate to include lists of examples of harassing or bullying behaviours. The main reason is that the decision about whether a situation is interpersonal conflict or workplace harassment or bullying will be very fact and context specific. Not including examples of interpersonal conflict or harassment or bullying in policy is consistent with the general approach taken by WCBs in Canada. The WCB will, however, provide detailed guidance to our decision makers that includes examples and scenarios to support them in determining if a worker has experienced workplace harassment or bullying.

6

PREDOMINANT CAUSE

Both employer and worker/labour stakeholders expressed concern that the description of “predominantly caused” in the policy is too vague. Worker/labour stakeholders were critical of the description of “predominant cause”, arguing that it is not consistent with the plain meaning of the word, the thin skull principle, or Sections 186 and 187 of the *Act*. They also believe there is no legal basis to apply predominant cause when determining ongoing entitlement to compensation.

Also, the WCB’s inclusion of “51%” as an example of what predominantly cause means, was questioned and/or critiqued by both employer and worker/labour stakeholders. Some employers thought “51% caused by work” was too low, and some asked how, or what “formula”, will be used to determine the level of work-relatedness.

WCB Response

The level of detail used in the description of “predominantly caused” in the policy is consistent with that provided by other Canadian WCBs. The WCB does not believe it’s appropriate to provide

detailed criteria or examples of “predominantly caused” in policy because this is ultimately a fact-based decision that will be made by weighing the evidence that has been collected and applying the relevant law and policy.

Upon further review, the WCB believes that the use of the phrase “the significant work-related stressor(s) will be considered the predominant cause(s) when they outweigh all other stressor(s) combined (i.e. 51%)” in the policy is causing confusion and has led stakeholders to believe that there is a formula that can be used to determine causation. This is not the case. Therefore, the WCB has changed the description to “the significant work-related stressor(s) will be considered the predominant cause(s) when they are the primary or main cause.” This is consistent with the approach used by other WCBs (ON, BC, AB) that have this requirement.

Section 10J(1)(b) of the Act states “notwithstanding subsection 10(5), is wholly or predominantly caused by...”. This means the “due in part” by work requirement in subsection 10(5) of the Act does not apply to gradual onset or traumatic stress claims. Rather, a claim can be accepted, and a worker paid compensation, when work is the predominant cause of the injury. This applies to both initial, and ongoing, entitlement to compensation. It also means that apportionment of benefits does not apply to these claims. *Policy 3.9.11R2 – Apportionment of Benefits* has been updated to reflect this.

7

IDENTIFYING EVENTS AND COLLECTING INFORMATION

Employers asked that “employer” be specifically listed in the section as a potential source of information used by the WCB to confirm that the alleged work-related stressors have occurred. Additionally, several employers asked if employers are required to investigate traumatic events or workplace harassment or bullying in their workplaces, and how the WCB considers investigation results in the decision-making process.

Some employers requested including a statement in the policy that would list the type of “evidence to the contrary” that would rebut the “presumption” that a psychological injury claim was work-related.

Worker/labour stakeholders expressed concern that the requirement for WCB decision makers to be able to identify the event(s) claimed to have caused the mental stress suggests there is a greater standard of proof for these claims than there is for physical injury claims. They also requested that the policy be clear that a “near miss” can be considered an “identifiable event.”

WCB Response

The WCB has updated the policy to acknowledge that the WCB both gathers and considers information and has included “employer” and “members of the public” to the list of information sources.

The WCB does not require employers to conduct investigations or produce investigation reports. However, as part of their efforts to create psychologically healthy workplaces, many employers have investigation protocols, including the production of a report. The WCB will review all

information provided by an employer, including investigation reports. The WCB has included a short statement in the policy to clarify these points. The weighting of the report in the decision-making process is determined on a case-by-case basis.

There appears to be a belief among some employers that there is a “presumption” in the Act that applies specifically to the psychological injuries covered by the draft policy. This is not the case. The only presumption specific to psychological injuries is found in Section 12A of the Act and Sections 40–45 of the Workers’ Compensation General Regulations for psychological injuries that are post-traumatic stress disorder (PTSD) by a frontline or emergency response worker. The Act does include a general presumption in Section 10(4) that applies to all claims, including psychological injury, that states that if an injury happens at work it is presumed to be caused by work, and vice versa, unless the contrary is shown.

When adjudicating a claim, WCB decision makers confirm that the accident and injury occurred. When doing so they consider Section 10(4) of the Act (mentioned previously). The requirement that the workplace stressor be identifiable is not new. For example, the current (and new) psychological injury policy requires a traumatic event to have a “specific time and place.” Now that psychological injury in the form of gradual onset stress is covered (in most cases workplace harassment or bullying), we want to make sure it is clear that the WCB will require sufficient details about the workplace stressors to enable us to confirm, and understand, what happened. For example, it wouldn’t be sufficient for a worker to state that their workplace culture is “toxic.” We would need information about the comments or conduct (e.g. approximate date, location, persons involved) to be able to make a claim decision.

We believe the policy covers “near misses” through the definition of traumatic event.

8

DSM DIAGNOSIS

An employer organization suggested the diagnosis requirements in the policy should be more prescriptive and recommended using the approach taken by the Saskatchewan WCB. This would include specifying various “levels” of diagnosis, stating when the WCB will have a WCB contracted service provider carry out a diagnosis, and stipulating when workers need to be re-evaluated.

WCB Response

The policy requires workers to be diagnosed with a psychological injury as per the DSM. In recent years, the WCB has moved away from including process or procedure level requirements in policy because they can quickly become out-of-date when the WCB changes procedures or service provider contracts. Therefore, the WCB has not included additional detailed diagnosis and assessment requirements in the policy.

We have made a change to the policy that will improve our ability to access diagnosis and treatment for injured workers in a timely manner. In addition to psychiatrists or clinically trained psychologists registered with the Nova Scotia Board of Examiners in Psychology, we will also accept diagnosis from these practitioners who are registered with an equivalent body in another part of

Canada. This increases our access to qualified health professions in our quest to provide excellent service to injured workers and employers.

9 EXCLUSIONS

Employers requested more examples be included in the list of employer actions or decisions that are not covered by the legislation or policy. Worker/labour stakeholders asked that the WCB make it clear in the policy that there is no exclusion for employment decisions or actions that are harassment or bullying.

WCB Response

The WCB has reorganized the list of exclusions and added some clarifying examples (workload, deadlines, changes in role). We have not added any additional statements to the policy because we believe the definition of workplace harassment or bullying, and the exclusion section in the policy, make it clear that employer conduct that is harassing or bullying in nature is not excluded from coverage.

APPENDIX A - FINAL PSYCHOLOGICAL INJURY POLICY

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: June 27, 2024

Preamble

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

For the purposes of this policy:

"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 significant in intensity

and/or duration in comparison to the normal pressures, tensions or events experienced by workers in similar circumstances, occupations, or professions. Significant work-related stressors include personal experience of, or directly witnessing, a work-related traumatic event; and being subject to 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.
- 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.

1. Scope

1.1 Psychological Injuries Caused by Mental Stress Only

This policy applies to psychological injury claims for work-related gradual onset or traumatic mental stress. The policy does not apply to psychological injuries that arise as a consequence of a physical injury.

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)*, Sections 2(a), 10J(9), 12A(7A).

2. General Criteria for Compensable Psychological Injuries

Claims for psychological injury 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, with respect to the specific nature of the worker’s gradual onset or traumatic mental stress. 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 an equivalent Canadian body.
- The work-related gradual onset or traumatic mental stress are not due to*:
 - interpersonal conflicts (except for workplace harassment or bullying); or

- actions or decisions of the employer relating to the worker’s employment.
- The psychological injury is wholly or predominantly caused by one or more significant work-related stressors, or cumulative series of significant work-related stressors.
- The WCB decision maker is able to identify the event(s) which are claimed to have caused the gradual onset or traumatic mental stress.

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 6 for more information on these exclusions.

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

4. Predominant Cause

If a psychological injury resulting from gradual onset or traumatic mental stress is causally linked to multiple stressors (work-related and non-work related), the significant work-related stressor(s) will be considered the predominant cause(s) when they are the primary or main cause.

To ensure consistency, the WCB will continue to use the predominant cause test to determine ongoing entitlement to compensation. As an example, a worker receiving 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 alleged 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), 185.6. Exclusions*

6. Exclusions

6.1 Interpersonal Conflicts

Interpersonal conflicts between workers and their supervisors, co-workers, or customers are a typical feature of employment. A worker is not entitled to compensation if it is shown that a worker's gradual onset or traumatic mental stress was caused by interpersonal conflicts at work unless it is workplace harassment or bullying.

6.2 Employer Decisions and Actions Relating to a Worker's Employment

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).*

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.

APPENDIX B - CONSEQUENTIAL AMENDMENTS TO WCB POLICIES

Policy	Final Wording	Comment
1. Policy 1.2.14R1- General Entitlement – Occupational Disease Recognition	<p>Definitions</p> <p>Accident – is defined in section 2(a) of the Act and includes</p> <p>(i) a willful and intentional act, not being the act of the worker claiming compensation,</p> <p>(ii) a chance event occasioned by a physical or natural cause, or</p> <p>(iii) disablement, including occupational disease, arising out of and in the course of employment</p>	Removed reference to exclusion of non-traumatic stress. Makes the definition in the policy consistent with definition in the Act.
2. Policy 1.3.5R2- Criteria for psychiatric conditions: occupational stress	<p>Preamble</p> <p>1. To determine the existence and degree of a worker’s permanent impairment due to compensable mental or behavioural (psychiatric) disorders, the Board relies on the current edition or version of the American Medical Association Guidelines to the Evaluation of Permanent Impairment.</p>	Removed reference to exclusion of non-traumatic stress.
3. Policy 1.3.7R1- General Entitlement – Arising out of and in the Course of Employment	<p>Definitions</p> <p>“accident” - as defined in Section 2 (a) of the Act, includes:</p> <p>(i) a willful and intentional act, not being the act of the worker claiming compensation,</p> <p>(ii) a chance event occasioned by a physical or natural cause, or</p> <p>(iii) disablement, including occupational disease, arising out of and in the course of employment.</p>	Removed reference to exclusion of non-traumatic stress. Makes the definition in the policy consistent with definition in the Act.
4. Policy 3.9.11R2- Apportionment of Benefits	7. Mental stress claims accepted under sections 10J of the Act are not subject to apportionment. See <i>Policy 1.3.10 - Psychological Injury</i> for the requirements related to work-related mental stress claims.	This statement was added because the Act, in Section 10J(1)(b), specifies that these types of claims will not be subject to apportionment.