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**COCA Update on WorkSafeBC Activities #545 October 17, 2012**

## **Mental Disorder Legislation -- What it is – What to do about it**

### **What it is**

The provincial government has passed an amendment to the Workers' Compensation Act that provides compensation for a gradual onset Mental Disorder.

The legislation came into effect on July 1, 2012 despite strong COCA opposition. The legislation provides that workers' compensation is payable for a Mental Disorder when the Disorder is the result of one or more traumatic events.

The Disorder must be:

- “Predominantly caused by significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of employment.”
- “Diagnosed by a psychiatrist or psychologist”
- “Not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.”

(All quotes from the Workers' Compensation Act section 5.1)

WorkSafeBC has written policy to provide guidance on the legislation. The policy states that “work-related stressor is considered ‘significant’ when it is excessive in intensity and/or duration from what is experienced in normal pressures” and that “interpersonal conflicts between the worker and his/her supervisors, co-workers or customers are not generally considered significant unless the conflict results in behaviour that is considered threatening or abusive.” (Rehabilitation Services & Claims Manual; RE: Section 5.1 Mental Disorders Item C3-13.00)

The policy makes it clear that the WorkSafeBC decision maker must consider whether “there is a connection between the mental disorder and the one or more traumatic events, including whether the one or more traumatic events were of sufficient degree and/or duration to be of causative significance in the mental disorder; any pre-existing non-work related medical conditions were a factor in the mental disorder; and any non-work related events were a factor in the mental disorder.”

## What to do about it

It is important that the employer send in writing to WorkSafeBC any information that the employer may have on the circumstance of the worker making the claim for Mental Disorder.

Depending on the individual circumstance, this information could include any pre-existing non-work related conditions that may have been a factor – such as a history of mental disorders, family or financial difficulties, related medical issues, dependency problems and so on.

The information from the employer could also include any non-work related events that could be a factor such as divorce proceedings, non-work injuries, lawsuits, property damage, vehicle accidents and so on.

WorkSafeBC must also seek independent verification of the worker's claims about the workplace, through information provided by co-workers, supervisory staff and others.

WorkSafeBC must also consider all of the relevant medical evidence, including prior medical history, attending physician reports and expert medical opinion.

## Outside Work Hours

Remember that any place or time that people are gathered for work-related reasons is still considered part of the “workplace”. This includes business travel, conferences, telephone calls, company social gatherings, and job interviews. Harassment must not be permitted in any of these situations, and employers are responsible for dealing with it in these circumstances.

## For claims that you think are NOT work related

Contact the Employers' Adviser a free service that can offer advice and assistance:  
email: [eao@eao-bc.org](mailto:eao@eao-bc.org)

Toll free to Richmond head office e:  
1-800-925-2233

## How to Prevent Mental Disorder Claims

Do not permit or condone bullying and harassment within your company. Bullying and harassment includes any of the following:

- unwelcome remarks, slurs, jokes, taunts, or suggestions about a person's body, clothing, race, national or ethnic origin, colour, religion, age, sex, marital status, family status, physical or mental disability, sexual orientation, pardoned conviction, or other personal characteristics;
- unwelcome sexual remarks, invitations, or requests (including persistent, unwanted contact after the end of a relationship);
- displays of sexually explicit sexist, racist, or other offensive or derogatory material;
- written or verbal abuse or threats;

- practical jokes that embarrass or insult someone;
- leering (suggestive staring) or other offensive gestures;
- unwelcome physical contact, such as patting, touching, pinching, hitting.

### Include a Policy on Bullying/Harassment in your Company OHS Manual

Here is a sample that you can use or adapt:

#### ANTI-HARASSMENT POLICY STATEMENT

To: All employees Date: Subject: Policy Statement for XYZ Company

Our commitment: At XYZ Company, we are committed to providing a safe and respectful work environment for all staff and customers. No one, whether a manager, an employee, a contractor, or a member of the public, has to put up with harassment at XYZ Company, for any reason, at any time. And no one has the right to harass anyone else, at work or in any situation related to employment. This policy is one step toward ensuring that our workplace is a comfortable place for all of us.

#### Harassment is against the law

The Canadian Human Rights Act and the Canada Labour Code protect us from harassment. The Criminal Code protects us from physical and sexual assault. You have a right to live and work without being harassed, and if you are harassed, you can do something about it.

#### Employees' responsibilities

All employees have the responsibility to treat each other with respect, and to speak up if they or someone else is being harassed. All employees have a responsibility to report harassment to the appropriate person. All employees are responsible for respecting the confidentiality of anyone involved in a harassment complaint.

#### Managers' responsibilities

Each manager and supervisor is responsible for fostering a safe working environment, free of harassment. Managers must set an example for appropriate workplace behaviour, and must deal with situations of harassment immediately upon becoming aware of them, whether or not there has been a complaint. Courts may impose penalties on the employer and the manager, even if neither of them was actually involved in or aware of the harassment, but should have known about it. A manager that didn't do anything to prevent harassment or to mitigate its effects may find her or himself facing financial and legal consequences.

#### XYZ Company's responsibilities

As an employer, XYZ Company also has a responsibility to be aware of what is happening in the workplace. As President, I promise to treat all incidents of harassment seriously. I undertake to act on all complaints and to ensure that they are resolved quickly, confidentially, and fairly. I will discipline anyone who has harassed a person or group of people or who retaliates in any way against anyone who has complained of harassment, given evidence in harassment investigations, or been found guilty of harassment. I will discipline managers who do not act properly to end harassment.

At XYZ Company, we will not put up with harassment.

Sincerely, Mr/Ms ABC, President

Remember, that any policy is only as good as the process to make it effective within the workplace.

Train. Check. Enforce. Check again.

#### Action Plan Summary -- Employer

Include in the company's Occupational Health And Safety Policy a statement that bullying and harassment will not be tolerated by the company.

Treat all complaints seriously & investigate promptly. Take appropriate action, including discipline and training. Include this commitment in orientation and do regular checks. Ensure managerial actions – including warnings & discipline – are carried out in a manner that is not abusive

Advise workers to report to a Supervisor or Manager if worker observes or experiences any bullying or harassment in the workplace; if the person harassing is their boss, go to next level. Instruct Supervisors to watch for and correct or report any bullying or harassment that they observe.

#### Prevent Actions by Supervisor (draft WorkSafeBC policy)

“A Supervisor’s obligation to ensure health and safety of workers includes applying and complying with the policies, procedures and work environment arrangements that the employer has in place to prevent bullying and harassment.”

#### Prevention Actions by Worker (draft WorkSafeBC policy)

“A worker's obligation to take reasonable care to protect the health and safety of themselves or other workers includes:

- (a) not engaging in bullying and harassment of other workers;
- (b) reporting if a worker observes or experiences bullying and harassment in the workplace; and
- (c) complying with the employer's policies and procedures.”