

REPORT ON CONSULTATIONS:

Amending the Workers Compensation Act to Provide Presumptive Coverage for Post-Traumatic Stress Disorder

JUNE 2015

A Report Prepared by the Workers Compensation Board
on behalf of the Government of Manitoba



June 5, 2015

The Honourable Erna Braun
Minister Responsible for *The Workers Compensation Act*
Room 358, Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Minister:

I am pleased to present this summary report on the submissions received during the recent consultation on potential amendments to *The Workers Compensation Act* that would provide presumptive coverage for Post-Traumatic Stress Disorder (PTSD).

As noted in the consultation documents, this report will be posted on the WCB website.

Respectfully submitted,



Winston Maharaj
President and CEO

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BACKGROUND

Currently, under *The Workers Compensation Act* (the Act) an occupational disease includes stress that arises as "an acute reaction to a traumatic event." Claims accepted under this provision, which are usually described as "stress" or some variation on that term, are grouped under the broad category of "psychological injuries." They have arisen in a wide range of occupations, including emergency responders, social workers, nurses and other health care staff, retail workers, correctional officers, security guards and bus/truck drivers.

While claims for psychological injuries that meet the criteria under the Act are accepted, there is concern that several factors including the stigma associated with psychological conditions may inhibit workers with such injuries from filing claims and seeking the help they need. For example, the United Fire Fighters of Winnipeg (UFW) has expressed this concern with respect to emergency responders who may be suffering from Post-Traumatic Stress Disorder (PTSD) as a result of their work.

PTSD is a specific psychological condition associated with exposure to traumatic events such as actual or threatened death, injury, or violence. The symptoms of PTSD can include intrusive memories or flashbacks related to the event, emotional and behavioural disturbances, and persistent avoidance of places and circumstances associated with the triggering event.

Recognizing the general importance of mental health as a workplace issue and the impact of work-related conditions such as PTSD, the Manitoba Government's 2014 "Speech from

the Throne" promised "new legislation for fire fighters, paramedics and others suffering from Post-Traumatic Stress Disorder (PTSD)."

The Throne Speech commitment reinforced a pledge made in the Manitoba Government's *Five Year Plan for Workplace Injury and Illness Prevention*, released by the Minister of Labour and Immigration in 2013. The Prevention Plan promises to improve access to workers compensation benefits for "fire fighters, paramedics and others who routinely face high-trauma situations."

To guide its decision-making in this regard, the Manitoba Government asked the Workers Compensation Board (WCB) to gather input from stakeholders, the general public and experts in the mental-health and health-care fields. Specifically, input was sought on amending the Act to provide presumptive coverage for workers with PTSD. Presumptive coverage means that when a worker develops a specified condition and other conditions are met (such as being in a designated occupation or exposed to a particular event) it is assumed to be caused by their work unless otherwise shown.

A discussion paper providing background on the issue and a list of specific questions seeking feedback were provided directly to 55 stakeholders and experts, and was posted on the WCB web site for public input from February 23, 2015, to May 1, 2015.

The questions on which feedback was sought included:

1. Have you or your organization been involved in a worker's compensation claim based on PTSD? Was the claim satisfactorily resolved, and why?
2. Is there a need to amend the Act to improve the timeliness and consistency of adjudication in respect of claims based on PTSD?
3. Is a legislative presumption an appropriate method by which to improve the timeliness and consistency of adjudication in respect of claims based on PTSD?
4. What are the advantages and disadvantages of a presumption based on particular types of occupations?
5. If the Act were amended to provide a presumption in respect of PTSD for certain occupations, what occupations should be included?
6. What are the advantages and disadvantages of a presumption based on the triggering events for, and a diagnosis of, PTSD?

7. Should a legislative presumption be made retroactive and for what period of time?
8. Do you have any other comments or suggestions on the subject of PTSD in the context of the workers compensation system in Manitoba?

A total of 29 submissions were received: 11 from labour organizations and workers; 15 from employer organizations and employers; and 3 from health-care and mental-health experts.

INPUT FROM LABOUR ORGANIZATIONS AND WORKERS

Overall, labour organizations and workers expressed support for presumptive legislation for PTSD.

Common reasons expressed for this position were that a presumption would reduce the reluctance on the part of affected workers to file WCB claims because of the associated stigma, ensure they get quicker access to the supports and services they need, and ease the adjudication process for workers already negatively affected by their condition.

With respect to the scope of coverage, there was general agreement among labour organizations and workers that a presumption should not be confined to workers in specific occupations. These submissions pointed out that workers can develop PTSD from a wide range of situations in many different types of jobs. In addition to first responders, examples cited of workers who may experience events that cause PTSD included corrections officers, nurses and those working with high risk youth/families or vulnerable persons.

One submission advocated that the presumption cover only first responders.

Some of these submissions also expressed concern about the concept of basing the presumption on triggering events. There were concerns about how triggering events would be defined and whether it might exclude situations that did not clearly meet those parameters.

Most of those submissions that commented on the matter were in favour of having the presumption apply retroactively regardless of injury date.

Other observations and suggestions included:

- Occupational burnout and secondary traumatic stress should be made compensable conditions as they have been shown to be related to PTSD.
- All psychological conditions related to a specific traumatic workplace event, such as anxiety and depression, should be included in the presumption to facilitate access to treatment and recovery.
- The time limit on when a WCB claim can be filed following an injury should be extended to at least 24 months, with the authority to waive the time limit on a case-by-case basis.
- WCB policy on the adjudication of psychological injuries should be reviewed in light of a recent decision of the Workplace Safety and Insurance Appeals Tribunal of Ontario that restrictions regarding compensation for chronic stress claims are in violation of the Charter.

INPUT FROM EMPLOYER ORGANIZATIONS AND EMPLOYERS

Employer organizations and employers were generally opposed to a PTSD presumption. The most common rationale for this view was that the Act already provides for adjudication and compensation for PTSD.

Employer organizations and employers expressed many concerns about issues related to diagnosis and how this might affect how claims are accepted under a presumption. Some pointed out that PTSD is a multi-faceted condition not given to easy diagnosis, that people

react to traumatic events very differently, and that PTSD can result from a combination of work and non-work events. Others pointed out that there are limited resources to conduct proper, timely diagnosis and that general practitioners are not qualified to do so.

Others suggested that a presumption would simply result in the WCB placing less emphasis on proper investigation and adjudication of claims, resulting in negative impacts on employers. Some observed that a presumption would absolve the WCB of its responsibility to investigate and properly adjudicate these claims.

Many of these submissions suggested ways to improve services for workers with PTSD other than through a presumption. These included ensuring the WCB has qualified mental-health specialists to support proper diagnosis of these injuries, and a specialized unit with qualified staff to focus on adjudicating and managing psychological injury claims.

Because of their general opposition to a presumption, employer organizations and employers did not comment extensively on scope of coverage. One submission suggested that if a presumption is enacted, it should be limited to first responders, while another said it should be limited to first responders, health-care workers, emergency dispatchers, and corrections officers.

Other observations and suggestions from employer organizations and employers included:

- If a presumption is enacted, it should not be retroactive.
- Any claims accepted under a presumption should qualify for 100% cost relief for the employer (meaning that the claim costs would be allocated to the general pool of WCB-covered employers and not affect the individual employer's assessment rate).
- PTSD can only be diagnosed after a month, so it is unclear how a presumption would speed adjudication.
- Wait times for mental-health services would mean that a presumption would not speed access to treatment.
- Education is a better way than a presumption of countering the stigma of filing a psychological injury claim.

- A presumption will add significant costs to the WCB system.
- A presumption would not be in the mainstream of Canadian workers compensation programs.
- The process is flawed, as indications from government are that a decision to legislate a presumption has already been made.

INPUT FROM HEALTH-CARE/MENTAL-HEALTH EXPERTS

Some of the key observations and suggestions made by health-care and mental-health experts include:

- A presumption could help raise awareness and reduce the stigma of mental-health issues.
- Early access to resources and treatment is crucial for those with mental-health conditions.
- WCB staff should be trained in the effects of trauma.
- First responders should be specifically included under a presumption, but that does not mean others could not be as well.
- Lawyers, corrections officers, and probation/parole officers could also be included.
- Any presumption should be retroactive.

CONCLUSION

Contributors expressed divergent views on the basic question of whether a presumption is the best way to ensure that workers with PTSD get the services and supports they need. Those from the labour community were generally in favour of a presumption, while those from the employer community were generally opposed.

Among those who supported the concept of a presumption, there were different views on whether it should be based on occupation or on diagnosis and triggering events. The majority of those who support a presumption would prefer it not be confined to particular occupations. Some of those who oppose a presumption suggested that, if it is introduced, it should be confined to a relatively small number of occupations, namely first responders.

There was general agreement expressed on a number of important areas. There is a widely recognized need to improve services and supports for workers with PTSD and other

psychological injuries. This includes the need to enhance services and capacity at the WCB and throughout the health-care system. There was also general agreement on the need to counter the stigma associated with PTSD and other psychological conditions so that workers are less reluctant to seek help from the WCB and elsewhere.

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