

Workplace chronic mental stress claims in Ontario

Fact sheet

Until 1998, our Ontario worker's compensation system compensated workers with mental health injuries, whether they were chronic (acquired over time) or acute (from a traumatic event). For many years, the basic principles of workers' compensation allowed workers who suffered from conditions such as major depressive disorder, anxiety, and post-traumatic stress disorder because of their work were entitled to benefits. This remained true until the late 1990s, when then Minister of Labour Elizabeth Witmer and the Mike Harris Conservatives passed Bill 99. This bill made a number of negative changes to workers' compensation, including removing coverage for chronic mental stress. Elizabeth Witmer is now Chair of the WSIB's Board of Directors.

Workplace Safety and Insurance Act limits coverage

Specifically, Bill 99 limited coverage for mental health injuries to workers who had experienced traumatic mental stress. Under this new law, only mental stress injuries caused by "an acute reaction to a sudden and unexpected traumatic event..." were covered.

As a result, the WSIB does not accept any mental stress conditions that emerge over time. A worker who develops a psychological disorder after witnessing a traumatic event, such as a co-worker dying in a construction accident, would be entitled to benefits, while a worker who develops the same disorder after enduring years of harassment at work would not. This is different from how Ontario's compensation law and policy treats physical injuries. Whether your physical injury is caused by a single event (like a broken limb), or emerges over time (like a repetitive strain injury), Ontario workers are entitled to compensation.

Restriction found unconstitutional

In 2014, the Workplace Safety and Insurance Appeals Tribunal (WSIAT), the final level of appeal from the WSIB, found the restriction on chronic mental stress injuries to be unconstitutional. It found that it was discriminatory to exclude chronic mental injuries from compensation and thus violated our fundamental right to equality.¹ Ontario's Attorney General decided not to appeal the decision to a higher court.

Unfortunately, despite the finding that the mental stress restriction is illegal, workers continue to be excluded from coverage. Injured workers and their advocates have asked the WSIB, its Chair Elizabeth Witmer, and the Ministry of Labour to change the relevant discriminatory law and policy, and they have so far refused.

¹ WSIAT Decision 2157/09 said the relevant sections of the WSIA violated sections 1 and 15 of the Canadian Charter of Rights and Freedoms.

Mrs. Witmer – who was one of the architects of Bill 99 and remains the Chair of the Board at the WSIB – has expressly told advocates that the WSIB is not able to compensate for Chronic Mental Stress because they are bound by the restrictions of the Workplace Safety and Insurance Act – restrictions that she herself helped to create.

What now?

Because of the inaction of the Ontario Government and the WSIB's application of its unconstitutional policy, workers with chronic mental stress injuries continue to be denied WSIB coverage. The only option for these workers is to engage in a multi-year appeals process, including a complicated, costly, and stressful Charter of Rights challenge, in order to receive the compensation that they are legally entitled to. Many of those affected by chronic mental stress have psychological disabilities that prevent them from working, and will spend years without any compensation benefits while fighting this battle. They often lose their savings, their homes, and end up on social assistance.

At a time of increased awareness about bullying, harassment, and mental health, the Ontario Government and WSIB continue to discriminate against workers with psychological injuries.

Calling on the Ombudsman to investigate

As a result, a group of legal clinics and private lawyers have filed a complaint with Ontario's Ombudsman. We welcome support of this complaint. Please write to Ombudsman Paul Dubé to support this complaint, describing how the WSIB's application of their unconstitutional mental stress policy affects the people you work with:

Office of the Ombudsman of Ontario
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(or [make a complaint online](#))