

Whitten & Lublin is a team of legal experts who provide practical advice and advocacy for workplace issues.

BRAVE NEW WORLD: MENTAL STRESS AND WSIB BENEFITS

WSIB coverage is expensive to begin with, and successful claims for workers' compensation can trigger increases in employer premiums.

For this reason, the Workplace Safety and Insurance Appeals Tribunal (the "WSIAT") rang alarm bells on April 29, 2014 when it released its latest decision regarding mental stress claims. Up until then, workers' compensation policy barred claims based solely on non-traumatic workplace stress, even if it resulted in the employee legitimately missing work. Historically, benefits for mental stress have only been payable when the stress arises from a traumatic event such as witnessing an accident.

In Decision No. 2157/09, the Tribunal - which hears appeals from WSIB decisions - determined the exception unconstitutional, finding that it conflicted with the guarantee of equality under the Canadian Charter of Rights and Freedoms by drawing an unnecessary distinction between mental and physical disabilities.

Subject to the outcome of a potential application for review by the courts, this decision will have far-reaching consequences for employers across Ontario. Although not binding in the strictest sense, the Tribunal clearly takes the view that The Workplace Safety and Insurance Act no longer precludes entitlement to benefits when non-traumatic workplace stress causes a leave of absence. This is particularly significant for smaller employers, many of which cannot afford to offer disability insurance - especially short-term coverage, which usually covers the first 90- to 180-day period of a leave of absence.

Moreover, the new decision may open up the possibility of reconsidering previously rejected applications by workers for benefits from the WSIB on the basis that these decisions violated the Charter as well.

The practical impact of this decision is that workers will be filing more claims for mental stress and they have a much better chance of winning them - at least in the short-term. When these claims arise from interaction with managers and human resources professionals, employers will be more inclined to participate in these cases, with a corresponding increase in legal fees and lost productivity. Indeed, the company's failure to attend the Tribunal's proceedings in Decision No. 2157/09 may have contributed directly to the adverse result.

On a more positive note, the decision should encourage employers to take a proactive stand on mental health issues in the workplace. Companies should seriously consider the impact of worker "burnout", low morale, psychological harassment, as well as other precursors to stress leaves.

We encourage businesses to review their existing policies and consider strategies with counsel to avoid or mitigate the impact of mental stress claims at the WSIB.

OUR LAWYERS

DANIEL LUBLIN

DAVID WHITTEN

CÉDRIC LAMARCHE

ELLEN LOW

AARON ROUSSEAU

DANIEL CHODOS

JONQUILLE PAK

CONSULTATIONS

For a consultation
please call us at

416-640-2667

or submit your
online request at

www.toronto-employmentlawyer.com
www.canadaemploymentlawyer.com

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LATEST NEWS

[David Whitten](#) was interviewed by CHCH Square Off discussing vacation entitlement. His video can be watched on our [Google+page](#).

[Aaron Rousseau](#) has been quoted in the article published by the Canadian HR Reporter re OHRC's new policy around mental health and addictions. The article can be read [here](#).

UPCOMING EVENTS

Save the date! [David Whitten](#) will be speaking about employment agreements at the Human Resources Professionals Association's Annual Conference taking place in 2015 from Wednesday, January 21 - Friday, January 23 at the Metro Toronto Convention Centre, Toronto, ON. For more information please visit [HRPA's website](#)

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