WCB Claim Process for Psychological Injuries caused by Workplace Harassment

Safety Matters @ Work

Workers Compensation Board of PEI

Agenda

- Introduction
- 2025 Policy Change
- Eligibility for WCB Benefits/ Adjudication Process
- Psychological Care Process
- Return to Work & Employer Expectations
- How to Support Workers
- Questions



Introduction

On July 1, 2020, changes were introduced to the *Occupational Health and Safety Act* to include workplace harassment regulations, providing standards for employers to follow, and further defining the rights and responsibilities of everyone in the workplace.

Effective January 1, 2025, the WCB has broadened its compensation coverage to include psychological injuries resulting from workplace harassment, thus aligning itself with the practices that have already been established by Occupational Health and Safety.

2025 Policy Change

The Workers Compensation Act considers stress (i.e., a trauma- and stressor-related disorder as per the DSM, such as Post-traumatic Stress Disorder) as a compensable condition when it is a result of an acute reaction to a traumatic event.

Expanded Coverage January 2025:

Amendments to the Psychological Or Psychiatric Condition Policy became effective. The changes extend coverage to psychological injuries arising from an acute reaction to a single occurrence or the cumulative effects of repeated work-related harassment.

Definition of Harassment

as per *POL-01 – Psychological or Psychiatric Condition*

"Harassment" means any inappropriate conduct, comment, display, action or gesture, or any bullying that the person responsible for the conduct, comment, display, action or gesture, or the bullying knows, or ought reasonably to know, could have a harmful effect on a worker's psychological or physical health or safety.

Definition of Harassment

as per *POL-01 – Psychological or Psychiatric Condition*

This includes:

Conduct that is based on any personal characteristic such as, but not limited to:

- Race, creed, religion, colour
- Sex, sexual orientation, gender identity
- Marital status, family status, pregnancy
- Disability, physical size or weight
- Age, nationality, ancestry or place of origin

Definition of Harassment

as per *POL-01 – Psychological or Psychiatric Condition*

This also includes:

Inappropriate sexual conduct that is known or ought reasonably to be known to the person responsible for the conflict to be unwelcome. Inappropriate sexual conduct includes, but is not limited to:

- Sexual solicitation or advances
- Sexually suggestive remarks
- Jokes or gestures
- Circulating or sharing inappropriate images
- Unwanted physical contact

What Might Constitute Harassment?

- Making sexually suggestive remarks or advances.
- Verbal aggression or insults.
- Threatening a person.
- Spreading gossip or rumours.
- Isolating or excluding the worker.
- Personal attacks based on someone’s private life.
- Unwanted gestures or inappropriate jokes.

Non-Compensable Causes

as per *POL-01 – Psychological or Psychiatric Condition*

A worker is not entitled to benefits for a psychological or psychiatric condition that results from factors or circumstances that are considered to be a part of every workplace and may be associated with necessary and unavoidable aspects of doing business

For Example:

Usual work pressures or reasonable actions taken by an employer or supervisor relating to the management and direction of the workers or of the workplace, such as:

- Interpersonal relationships and conflicts, unless they constitute harassment
- Health and safety concerns
- Decisions to change work being performed, work conditions
- Decisions to discipline or terminate the worker's employment
- Routine workforce management actions made by the employer including work evaluation, performance management, transfers, lay off, demotions and reorganizations.

What Might NOT Constitute Harassment?

- Expressing differences of opinions.
- Offering constructive feedback.
- Scheduling and workloads.
- Work assignments and job duties.
- Assessing and evaluating work performance.
- Disciplinary actions.

Definition of Harassment

as per *POL-01 – Psychological or Psychiatric Condition*

Harassment Can Be:

- Repeated Inappropriate Conduct

- Single Occurrences of Inappropriate Conduct

Time Limitations

When should I advise a worker to file a WCB claim?

You should advise a worker to file a claim with the WCB when you've been made aware that worker is experiencing mental health symptoms related to workplace harassment.

This is also the point that an Employer's Report – Form 7 should be completed and submitted to the WCB.



Eligibility to WCB Benefits

As with other claims, the goal of the adjudication process is to establish that an accident occurred, that it caused personal injury to a worker, and that it arose out of and in the course of their employment.

Adjudication

With respect to workplace harassment, this means:

Accident:
Workplace harassment has occurred.

Personal Injury:
A psychological injury has been diagnosed by a psychologist or psychiatrist in accordance with the *Diagnostic and Statistical Manual of Mental Disorders (DSM).*

Arose Out Of, And In The Course Of, Employment:
There must be a link to the worker's employment.

Adjudication - Accident

How does the WCB confirm harassment has occurred?

The WCB will assess and weigh all evidence and base its decision on the balance of probabilities – a degree of proof that is more probable that not.

This evidence may include, but is not limited to:

- Available documentation (emails, texts, etc.)
- Worker interviews and statements
- Employer interviews and statements
- Witness interviews and statements
- Employer investigation results

Adjudication - Accident

Is the WCB entitled to receive the employer's investigation report?

The employer is not obligated to provide the report in its entirety, but they are required to submit *something.*

We expect that in many cases, the employer's investigation report won't be available at the time of adjudication. In these cases, we may come to a decision on the claim without it.

If information from the report is received later, it will be reviewed as new evidence for initial and ongoing entitlement.



Adjudication - Accident

Where the employer has done an investigation, we will ask:

- **Are there findings of harassment or bullying?**
- **Are there recommendations from the findings?**
- **Please provide the recommendations and findings to the WCB**.

Claim decisions are made on a balance of probabilities after weighing all the available evidence. If the evidence on file weighs equally, the benefit of the doubt will apply, and the decision will be made in favour of the worker.

Adjudication

Will harassment claim criteria and consideration be limited to incidents solely involving workers and their coworkers?

Every claim will be considered based on the specific details of the situation. In some cases, incidents involving clients *may* be considered and accepted.

Example: A client repeatedly calls a worker's office phone to insult, threaten, and berate them.

Adjudication - Injury

What constitutes a "personal injury" and how is it determined?

As per POL-01, a psychological injury can only be diagnosed by a psychologist or a psychiatrist, and it must be done in accordance with the *Diagnostic and Statistical Manual of Mental Disorders (DSM).*

The DSM, developed by the American Psychiatric Association, is essentially the handbook used throughout much of the world as the authoritative guide for diagnosing mental health injuries and disorders.

Workplace harassment can lead to a number of depressive and anxiety disorders such as generalized anxiety disorder, panic disorder, social anxiety disorder, major depressive disorder, and more.

Psychological Care Process

The WCB has a Psychological Care Process in place to support timely diagnosis and treatment of work-related psychological injuries which includes access to a psychologist and a network of counsellors.

- We have provider agreements in place to provide psychological assessments in a timely manner.
- Our service provider list is growing with in-person and virtual options.
- We continue to expand and grow our network of providers to ensure timely and appropriate treatment options are available to workers.

Adjudicative Process - Summary

1. Worker and Employer submit Accident Forms
2. Supplemental Documents (texts, emails etc), Initial Medical
3. Interviews – Worker, Employer, Witnesses, Respondent (All 4 Not Required)
4. Employer Investigation Report/Summary – (If available)
5. Preliminary Determination whether a workplace accident occurred

If Yes:

1. Psychological Assessment and Report
2. Determination if Worker Receives a DSM Diagnosis
3. Final Claim Entitlement Decision – (Accident, Injury, Work Relatedness)

Return To Work

An equal focus will be placed on return to work.

Employers have a duty to accommodate even with claims involving workplace harassment. Thinking outside the box to develop modified and alternative duties will be crucial in getting workers back to work quickly and safely.

The more options that an employer, healthcare providers, and the WCB have to collaborate on, the better the chances of a successful and timely return to work.

Without a comprehensive list of modified duties or temporary accommodations, the chances of an early and effective return to work significantly decrease.

Return To Work

Employers should carefully review the results of their own internal investigation. These reports often provide recommendations, and these recommendations can be used by the employer and the WCB to help determine what has been done and what *needs* to be done.

While working toward workplace restoration is obviously important, employers should also be considering things they can do *during* the workplace restoration process.

Employer Expectations

Employers have several expectations, roles, and responsibilities in workplace harassment claims.

Timely Submission of Information
The Employer's Report – Form 7, statements, supplementary information, and more should all be submitted in a timely manner.

Investigation Results
The results of the employer's internal investigation, at least in some capacity, should be provided to the WCB for review.

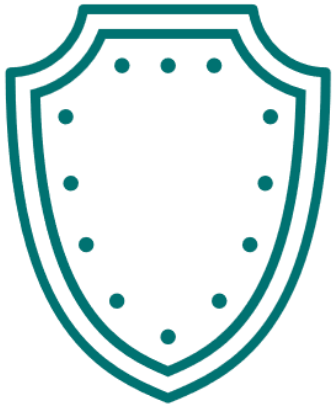
Participation & Communication
The employer is expected to participate in the adjudication and return-to-work processes, and to communicate with the WCB and the worker throughout the claims process.

Prevention

As with anything, the most effective way of mitigating these difficult situations is through a conscious effort of prevention.

It's important to recognize potential problems when they happen and to act on them accordingly. The longer a situation is left to evolve, the more likely it is to be perceived as harassment.

The longer a person must endure a difficult situation, the greater the chance they have of developing a mental health injury.



How to Support Workers

- While a decision is being made on a claim, we encourage workers to seek support from programs and services available to Islanders in the public system:

https://www.princeedwardisland.ca/en/information/health-pei/mental-health-support-and-services

Online/In-person services, Walk-in Clinics, Mobile support, Mental Health Patient Navigator

- Promote Employee Assistance Programs

- Mental Health Services available under group health benefits

Questions

See our Website for more Information:

FAQ's, Sample Scenarios and More

https://wcb.pe.ca/Workers/PsychologicalInjuries

Scenario 1

Bob is a construction worker who has kids that participate in hockey. His coworker Hank also has kids in hockey. Hank has been yelling in the rink about his kid's ability to save goals and has been discussing Bob and his kid's skills with other parents. Hank does not discuss hockey at work. Bob has been diagnosed with Generalized Anxiety Disorder.



Likely Claim Outcome:

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Likely Claim Outcome:
Probably not accepted. The harassment is not work-related.

Scenario 2

Sandra is a nurse who works in a health care facility. Sandra and the other nurses in her work unit are social media friends. Michelle, Sandra's coworker, has been posting pictures of the clothes Sandra wears to social media with sarcastic remarks about them. The other nurses are adding their own remarks to these posts as well. This continues for a number of months, and Sandra is eventually diagnosed with Adjustment Disorder with Anxiety.



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Likely Claim Outcome:
Probably accepted. The harassment, although taking place on social media, involves members of the work unit and extends to the workplace.

Scenario 3

Tim can’t stand one of his coworkers. Their desk is always messy, they’re lazy, and Tim constantly has to carry their weight on team projects. The supervisor refuses to fire the coworker. Tim is fed up. Tim is diagnosed with Generalized Anxiety Disorder.



Likely Claim Outcome:

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Likely Claim Outcome:
Probably not accepted. Interpersonal conflict is not considered to be work-related harassment.