

BULLETIN

WCB changes won't help victims of mental stress

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Bill 14 is being heralded for making BC a leader on workplace mental health and stress. But in practice it will make life harder for employees facing mental stress.

Before the BC Liberals -deconstructed" workers compensation in 2002, it was possible to be compensated for workplace bullying and harassment, as well as any other events in the workplace which may have harmed you psychologically. It was never easy to establish, but if you suffered a psychological disorder as a result of actions to which you had been exposed in the workplace, you could file a claim.

This all changed when then premier Gordon Campbell introduced the new Workers Compensation Act. That Act contained a new section (5.1) which essentially limited -mental stress claims", to events which were intensely horrific and objectively traumatic. Their object was to prevent -cumulative trauma- claims resulting from ongoing abuse at work.

Heres an example: an HSA member was relentlessly persecuted by her site manager over a couple of years. Eventually, as a result of grievances filed by the HSA, there was an independent investigation and the manager was -transferred" elsewhere. The employer compensated the member by giving her a few months off, but it was too late; she had developed severe and intractable depression.

The member filed a claim. While she was initially turned down by the WCB (also known as WorkSafe BC), she won on appeal and was granted a 100% disability pension for life.

Today, that member could not even file a claim.

We are hearing a lot about how the government is changing the Workers Compensation Act to allow for mental stress claims and to prevent bullying and harassment. Its a good thing that harassment provisions are being introduced and we hope they will make a difference. They do not, however, help psychologically traumatized workers get their claim accepted.

Bill 14, which amends the Act and introduces coverage for -cumulative trauma" injuries, will certainly not be opening the floodgates to mental stress claims. First introduced in November 2011, in a more generous form, it was reintroduced in the spring of 2012 as a much meaner piece of legislation after employers went on a rampage.

Firstly, there was no change to the 2002 Act that said any claims resulting from "...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" will not be covered. Essentially all labour relations issues are exempted from coverage by the Workers Compensation Act.

For those instances where it is not considered a -labour relations issue" the worker must meet a stringent test: the board officer must now determine if the stressor at work was the -predominant cause" of the workers disability. This is entirely new language in the Act. What this does is oblige the board officer adjudicating the

claim to dig into the personal life of the worker, examining ALL of the stressors in her life.

This flies in the face of the historical workers compensation system and law in this province.

The Supreme Court of BC has made it clear that a stressor needed only be "a significant cause" of the resulting psychological condition, not the most significant cause. The result is this: all actions which can be considered labour relations are automatically excluded from coverage under the Workers Compensation Act. And if you actually get to first base and file a claim, be prepared for your entire life to be subjected to scrutiny while a stranger decides which of the stressors in your life caused your psychological disability.

This is not a generous amendment from the Liberal government; it is another incursion on the lives of honest working people.

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