



Modernization of the *Workers' Compensation Act and Occupational Health and Safety Act*

Acts modernization external advisory group meeting 6 – mental health

Mount McIntyre Recreational Centre, Whitehorse

Thursday, November 28, 2019, 12:30 p.m. to 2:30 p.m.

Introduction

This is a summary of comments made by participants at the external advisory group session on November 28, 2019. For more information on the topics that were discussed [download](#) the mental health paper.

Method

Participants were divided into groups randomly and were asked to discuss acts modernization policy topics. Through group discussions that included Yukon Workers' Compensation Health and Safety Board (YWCHSB) staff, participants had their thoughts recorded on poster paper. The groups discussed three questions for each topic.

1. *What are the benefits to this approach?*
2. *What are the disadvantages/risks?*
3. *What are some other options to consider?*

The poster paper notes are reflected in this document.





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Determining if a psychological condition is an injury under the *Workers' Compensation Act*, and updating legislation to enhance fairness and reduce stigma

Proposal

The Government of Yukon is proposing to make changes to the definition of “injury” to make it consistent with the majority of other Canadian jurisdictions. The concept of disablement will continue to exclude chronic stress, but would no longer exclude physical injuries caused by stress, such as a heart attack or stroke.

Benefits

- Clarity;
- Could help to reduce stigma;
- Coverage – return-to-work options for employer;
- Could make employers more aware of unmanageable or very large caseloads;
- Moves in the direction to bring Yukon into alignment with current trends and the rest of Canada;
- Broadens acceptance of injuries;
- Progressive feel;
- Workers will feel more supported;
- Emphasis on mental health; and
- Expands definition to include disablements that result from stress.

Risks and challenges

- Could be reactive instead of proactive;
- May not be enough change;
- Still doesn't solve issue of determining causation;
- Could treat physical and psychological differently;
- Broadens acceptance of injuries -> more claims -> more money;
- Imbalanced power (employer over employee);
- Language used chronic versus acute in relation to stress;
- Some considerations may take a while to develop and legislative proposal doesn't account for clinically significant symptoms; and
- Will a working diagnosis be considered?



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Other options to consider

- How can we be more proactive on workplace mental health?
- Predominantly caused as the threshold;
- Should receive same level of care regardless of employer;
- Consider modified duties upon hire, not retroactively;
- Clear process available – Saskatchewan has a model;
- Focus on prevention in the workplace;
- Align with CSA standards/language;
- Accountability on the employer;
- Proactive support mechanisms (HR);
- Preventative support system;
- Incorporate mental health into the return to work plan;
- Option for expedited assessment by psychologist;
- Consider other solutions as taken by other jurisdictions;
- Include element of flexibility so that worker with many symptoms but no clear diagnosis and is disabled may have coverage; and
- Could create a fund for workers with psychological injuries, to help workers from small employers who don't have resources to help their workers with mental health and return to work.

Key takeaways from definition of injury

Participants were asked to report to the large group any takeaways from their small group discussions. This is what we heard.

- Don't like that employer absolved from responsibility in definition of injury;
- Is incumbent upon employer to keep safe;
- Employer can create stressful situation at work;
 - There needs to be another mechanism in place regarding prevention before causation of injury
- Accountability of employer paramount – track and monitor stress at workplace;
- Definition proposed is too one-sided;
- When some employers have so many injuries, there needs to be accountability;



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- What supports are available for workers with mental injuries?
- Can we use a “working definition” of stress?
- When someone is injured, has to overcome the wait times to see medical help; and
- Lack of knowledge regarding what is currently covered.



Labour-relations exclusion

Proposal

The Government of Yukon is proposing to include a labour-relations exclusion in the legislation (consistent with the principles already in policy) similar to other Canadian jurisdictions.

Benefits

- Less abuse of the system;
- Fine line;
- Protects employer;
- Makes it clear that employer can still hire, fire, etc. in regular ways;
- Could decrease workload for employer and YWCHSB if the process is still clear for workers;



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- Promotes employer's ability to run their workplace and manage employees without worry of "injury" of workers; and
- Clarity on what's acceptable and what's not.

Risks and challenges

- Opening door to general harassment;
- Employer has opportunity to capitalize on using unfair discipline;
- Language needs to be clearer;
- Underlying mental illness;
- Inconsistencies with occupational health and safety;
- Balance between risks for employee versus employer;
- Creates license for management to manage poorly, suggests incompetence;
- Not all management actions are reasonable;
- Current respectful workplace policy for Yukon Teachers Association (YTA) and Yukon Employees Union (YEU) not necessarily always working well; and
- Can't let employer claim double jeopardy.

Other options to consider

- Take context in the way discipline is administered;
- Specific definition of "reasonable";
- Even balance between employee and employer;
- Look at *Human Rights Act* to determine vexatious complaints;
- Definitely don't want to lose grievance process through this change – for YEU and YTA employees;
- What about workers with pre-existing mental health conditions?
- Need parameters around management actions and what is reasonable;
- Consider psycho-social risk factors leading to injury;
- Updates to occupational health and safety legislation that addresses and provides guidance to employers around harassment, bullying, etc.; and
- Arbitration for labour-relation type issues into occupational health and safety legislation.



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Key takeaways from labour-relations exclusion

Participants were asked to report to the large group any takeaways from their small group discussions. This is what we heard.

- Impact of proposed change on existing articles in collective agreement (YTA);
- Management making sound decisions is not a trauma, management being malicious is a trauma; and
 - Need to be aware of what a trauma is
 - This needs to clarify what is a real psychological injury
- Violence and harassment regulations can help address the second bullet point above.





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Parking Lot

When questions or statements arose throughout the meeting that were unrelated or were not covered by the topic under discussion, participants were encouraged to record thoughts on the “parking lot” poster paper.



No parking lot items were posted during this session.