



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

## Mental Health

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The Government of Yukon is looking to modernize and amalgamate the *Workers' Compensation Act* and the *Occupational Health and Safety Act*. Our goals are to:

- enhance workplace safety;
- reduce workplace incidents and injuries;
- improve services for our clients;
- reduce red tape and delays for workers and employers; and
- continue to responsibly manage the Compensation Fund.

With these goals in mind, we are proposing to modernize our legislation to clarify some of the provisions in the area of eligibility for compensation benefits.

Eligibility for compensation benefits is dependent on one simple question: did the injury arise out of and in the course of employment? This determination is generally straight forward when adjudicating physical injuries. Determining work-relatedness of psychological conditions, however, is often challenging.

This document is meant to provide some background and an overview of the issues with some possible solutions. Specifically, the following will be discussed:

- the challenges in determining if a psychological condition is an injury under the *Workers' Compensation Act*; and
- ways of improving legislation to enhance fairness and reduce stigma of psychological conditions and injury.

These issues are not exclusive and the group is welcome to explore any additional questions or solutions it considers important.

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

When a workplace injury is caused by an acute or immediate event resulting from a physical cause, like a slip and fall incident, it is generally straightforward to determine whether the injury is work related.

However, with psychological conditions or symptoms, there are typically multiple causative factors. The individual may have experienced personal trauma in their past, may be experiencing stress from personal issues now and may have also experienced a traumatic event in the workplace. Determining the cause or even one predominant cause of a psychological condition can be very challenging, especially when it develops over time.

Under the current legislation, post-traumatic stress is included in the definition of "injury," and is compensable under the *Workers' Compensation Act* when it arises out of and in the course of employment. Other psychological injuries that arise out of and in the course of employment are compensable if the worker's employment was a significant causal factor and there is a diagnosis as confirmed in the Diagnostic and Statistical Manual of Mental Disorders (or DSM, published by the American Psychological Association and used worldwide). Currently, compensation is not payable for the disablement of stress or a disablement caused by stress.

Most provinces and territories have some restrictions in their workers' compensation legislation on claims for chronic stress. Yukon, Newfoundland, Nova Scotia, Manitoba and Prince Edward Island all exclude stress unless it is an acute reaction to a traumatic event in the workplace.

Other provinces such as Alberta and Saskatchewan place limitations on claims for chronic onset stress in policy. For example, in Alberta, the work-related stressors must be the "predominant cause" of the injury and the work-related events must be "excessive or unusual in comparison to the normal pressures and tensions experienced by the average worker in a similar occupation."

A number of provinces and territories have also included restrictions on the definition of "accident" or



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the definition of “injury” that specifically exclude injuries or conditions resulting from decisions by the employer relating to the worker’s employment, including such things as discipline, workload, suspension or termination.

This is commonly referred to as the “labour relations exclusion.” As an example, a worker may be disciplined by their employer and suffer an adverse reaction to the discipline. The intent of this exclusion provision is to clarify that if a worker is disciplined and thereafter suffers an emotional reaction, the discipline is not considered a “traumatic event” entitling the worker to compensation. The worker may well be entitled to grieve the discipline or seek other remedies in law, but those remedies would be outside of the workers’ compensation system.

The Yukon legislation currently has no labour-relations exclusion but these same principles are currently set out in policy.

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.

A further proposal would be to include a labour-relations exclusion in the legislation (consistent with the principles already in policy) similar to other Canadian jurisdictions.

Questions for discussion:

1. What are some benefits and risks to the proposed approach?
2. Do the benefits outweigh the risks?
3. What are some other options to consider?