



### Mental Disorder Claims Under the Workers' Compensation Act – A Human Resources/Labour Relations Perspective

Section 5.1 of the *Workers' Compensation Act* (the *WCA*) was enacted effective July 1, 2012. The intent of the revision was to expand the scope of mental disorder claims arising out of and in the course of employment which would be accepted as compensable under the *WCA*. One aspect of this expanded coverage involves a mental disorder claim by a worker that "is predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment."

An immediate concern for employers from the implementation of Section 5.1 was an anticipated significant increase in mental disorder claims that would be filed by workers with WorkSafe BC. For those employer representatives responsible for administering compensation claims, it is expected that dealing with mental disorder claims may well evolve into a significant component of their work responsibilities.

However, employers' human resources/labour relations ("HR/LR") practitioners will also find their world impacted by the operation of Section 5.1 of the *WCA*. The focus of this article is to highlight what we expect will be three important impacts for HR/LR practitioners.

**First**, allegations of workplace bullying/harassment will often be deeply intertwined with employment/labour

related issues, particularly when the worker's allegations are directed towards a supervisor or manager. From this perspective, Section 5.1(c) of the *WCA* excludes mental disorder claims which are predicated on a "decision of the worker's employer relating to the worker's employment."

When a mental disorder claim related to alleged workplace bullying/harassment is filed, the first step normally taken by WorkSafe BC will be to conduct an investigation to determine the background facts. The initial focus at this stage will be on whether the claim falls within the "employment-related decision" exclusion in Section 5.1(c). If so, the claim would be denied at that stage.

The Board Officer will not only be looking at the circumstances raised by the worker leading to the alleged bullying/harassment, but also at how the employer representative delivered the employer-related decision to the worker. If the Officer determines that the decision was communicated in an abusive or threatening manner, then the employer's conduct will be considered to be a "significant work-related stressor" for the purpose of Section 5.1.

It must be noted that the WorkSafe BC Board Officers, who will be conducting the initial investigation into the worker's mental disorder claim, are not HR/LR practitioners. When looking at whether the

“employment-related decision” exclusion applies, they will do so from a worker compensation/health and safety background. It will therefore often be important for the employer’s representative, who will be interacting with the Board Officer during their initial investigation, to be someone with an HR/LR perspective.

**Second**, WorkSafe BC is in the process of implementing occupational health and safety policies in regard to workplace bullying and harassment. The underlying premise of the proposed policies is that bullying/harassment is a workplace hazard, and that employers therefore have to meet health and safety obligations under Part 3 of the *WCA* to address workplace bullying/harassment. (Part 3 of the *WCA* only applies to Provincially-regulated Employers. The O.H.&S. requirements that Federally-regulated Employers must meet are contained in the *Canada Labour Code*.)

It is anticipated that the Board’s policies will require the employer to conduct an investigation into an incident or complaint of alleged workplace bullying/harassment. In the event that WorkSafe BC conducts its own investigation at a later date into an allegation of workplace bullying/harassment (either from a mental disorder claim brought by a worker pursuant to Section 5.1, or from a complaint brought under Part 3 of the *WCA* alleging that the Employer did not meet its O.H.&S. obligations), it is likely that the Board Officer will direct the employer to produce a copy of the employer’s internal investigation report (and any related

documentation) to the Officer as part of the Board’s investigation.

**Third**, allegations of workplace bullying/harassment are prone to be the subject of an employee’s claim or complaint not only under the *WCA*, but also in other forums (such as a grievance under a collective agreement, or a wrongful dismissal action in Court, or a human rights complaint). HR/LR practitioners will therefore likely be involved in the overall handling of the worker’s complaint when raised in multiple forums.

With respect to the issue of forum shopping, we refer to Section 10(1) of the *WCA* which bans “any right and rights of action, statutory or otherwise, founded on a breach of duty or care or any other cause of action...in respect of any personal injury, disablement or death arising out of and in the course of employment.” The BC Court of Appeal has recently determined that Section 10(1) provides employers with “a complete immunization from workplace injury claims.” Accordingly, an employee should be precluded from seeking damages from their employer, arising from any injury resulting from workplace bullying/harassment, in any forum outside of the *WCA*.

Given the potential for multiple complaints, employers should give consideration to their current organizational structure and, particularly, to the typical division between HR/LR and OH&S practitioners. It is likely not advantageous for different persons in the employer’s organization to be managing complaints from the same individual, about

the same circumstances, but brought under different forums.

Employers are advised to use competent investigators, with a thorough understanding not only of its relevant policies but also the WCA claim/complaint processes. Those investigating the specific complaint should have a fulsome understanding and knowledge of the employee's work history, including attendance/WCB claims history, any earlier complaints made, and the organizational structure and issues.

The ultimate objective for employers should be prevention of complaints. Employers should consider training for all employees on what is or is not bullying/harassment. They should also set standards of professional conduct for the workplace, and

communicate that failure to comply will have consequences. Employers should also train supervisors and managers in conducting professional communications during performance evaluations, attendance management or disciplinary meetings.

Additional measures may need to be implemented once WorkSafe BC publishes and implements the new occupational health and safety policies regarding workplace bullying and harassment. In the meantime, all HR/LR practitioners should gain an in-depth understanding of the processes and criteria used to adjudicate claims. Employers should be monitoring claims, the bases upon which claims are denied or allowed, and stand ready to address any apparent "hazards" or cause(s) of successful claims.

#### Authors

This article was co-authored by  
**Adriana Wills** and **Alan Winter**  
of [Harris & Company](#).