

**Industrial Mediation**

Professional Corporation

Workplace Safety and Insurance Law for Employers

# **Ottawa Construction Association 10 November, 2017**



Workplace Safety Legal Services

# Seminar Breakdown

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- Part 1.** Recalling Chronic Mental Stress - Highlights Effective
- Part 2.** Key Elements in developing a safety policy
- Part 3.** Workshop ideas

# Before we start...a word from the MOL



The Training and Awareness Branch is pleased to announce that a draft **Voluntary Chief Prevention Officer (CPO) Occupational Health and Safety Management System (OHSMS) Accreditation Standard**

Consultation paper, have now been posted for public consultation on the Ministry of Labour (MOL) website

The MOL is encouraging all interested parties to provide comment and feedback by 20 December, 2017

<https://www.labour.gov.on.ca/english/about/consultations/accreditation/index.php>

# Chronic Mental Stress -HIGHLIGHTS

- The proposed policy supports the part of the Ontario government 2017 budget legislation (Bill 127) that will allow compensation for work-related chronic mental stress
  - Scheduled to take effect January 1, 2018
  - No retroactive application (at this point)
  - Combines existing Traumatic Mental Stress (TMS) with the new Chronic Mental stress.
    - WSIB policy document 15-03-14

# Difference between Traumatic Vs. Chronic *is the nature of the stress*

Traumatic Mental Stress	Chronic Mental Stress
Involves work-related events that are generally accepted as being traumatic in nature.	Involves work-related events that are non-traumatic in nature
Example: Witnessing a fatality or serious injury, physical violence, life threatening safety issue e.g. tampering with safety equipment etc...	Example: harassment, bullying, humiliating jokes, demeaning conduct, persistent criticism by coworker or boss over the years etc...

# 3 Key entitlement criteria for CMS

## 1. Diagnostic Requirement

Must have Diagnostic and Statistical Manual of Mental Health (DSM) by approved Health Care Professional. May require psychiatrist or psychologist at later point.



## 2. Injury Process

Must have 'substantial Work-Related Stressor' and includes bullying or harassment. Stress must be out of normal for situation



## 3. Causation Standard

The stress must have had a 'significantly contributed' to CMS for entitlement

**Entitlement to WSIB Chronic Mental Stress Benefits**  
Focus on RTW and ongoing communication  
Ongoing benefits as may be required  
May result in permanent impairment

# HIGHLIGHTS HUMAN RESOURCES

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There is no entitlement for traumatic mental stress due to an employer's decisions or actions that are part of the employment function, such as

- terminations
- demotions
- transfers
- discipline
- changes in working hours, or
- changes in productivity expectations.

# Return to Work TMS and CMS

## **Focus will be on Return-to-Work**

- WSIB Functional Abilities Form (FAF) - no provisions for cognitive abilities
- 1. On-going Re-employment obligation will be enforced
- 2. On-going duty to co-operate with WSIB
- 3. On going duty to accommodate under Human Rights

**See OHRC Policy on Preventing Discrimination on Mental Health Disabilities and Addictions**



**A. Worker Information**

- Investigation is critical here - time sensitive
  - Challenge where needed
- WSIB has to quick turn around time
- Call the WSIB Eligibility Adjudicator
  - Be relentless in your pursuit
  - Discussions documented - follow up with a letter

**Consider the Form 7 a blank cheque. What you say or don't say will make or break a case. Seek legal help before submitting**

# Key Considerations

- ❑ Form 7 (most important document employer will ever complete!)
  - Worker's Statement of Fact
  - Witness Statement of Fact
  - Write your objection with clear facts
    - ❑ Review all the information before submitting
    - ❑ Retain confirmation slip
  - Request written decision letter
- ❑ Time is critical
  - Have a plan in place (time sensitive)

# Key Considerations - let's discuss

Time to choose:

1. Amend your workplace harassment policy to reflect changes for CMS (reactive)

Or

2. Develop a CMS policy (proactive)



# Reasons for developing a stress policy

Writing our policy  
For Chronic Mental  
Stress (CMS)



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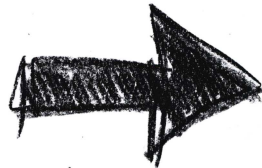
# Why are we developing this policy?

- Prevention first (Primary)
  - Controlling at the source
  - Controlling along the path
  - Controlling at the worker level
- Claims management second (Secondary)
  - Mitigating risk exposure and containment for claim costs and LTI

Remember when dealing with a Chronic Stress claim lost time is likely inevitable

# Defining Work Related Stress (WRS)

- The adverse reaction people have to excessive pressures or other types of demand placed on them at work.
  - Stress is not an illness – it is a state. However, if stress becomes too excessive and prolonged, mental and physical illness may develop



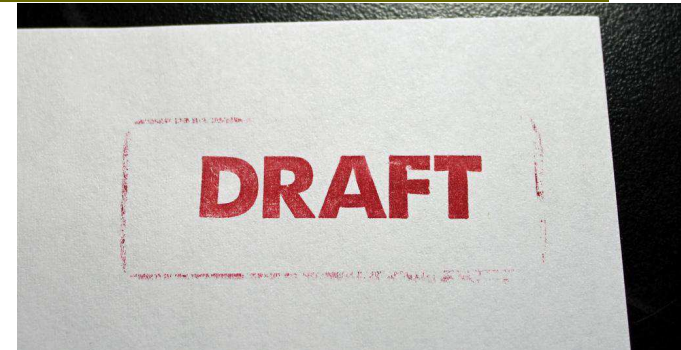
Physical illness

Psychological illness

# Elements of your safety policy

## \*Hazard assessment

1. Purpose
2. Policy
3. Definitions
4. Law
5. Roles and Responsibilities
6. Procedures
7. Effective date - annual review date



# Auditing for hazards leading to Stress

- Develop a questionnaire as part of a risk assessment process for the identification of hazards which could lead to WRS
  - The list of questions should focus on the following categories
    - Demands of the job
    - Control
    - Support
    - Relationships
    - Role

The audit is used to assess employee's perceptions. The survey must remain anonymous to be effective



# PURPOSE Clause

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- Company ABC is
  - committed to protecting the health, safety and welfare of our employees
  - We recognise that workplace stress is a health and safety issue and;
  - acknowledge the importance of identifying and reducing workplace stressors

# POLICY Clause

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- While stress may result from different aspects of life the focus of this policy is on work-related stress
- The company will identify workplace stressors and conduct risk assessments to help eliminate stress or control the risks from stress
- The company will consult with the JHSC, union on preventative measures to control workplace stress
- The company will provide training for all staff
- The company will provide adequate resources to help in the implementation of this policy

# Other considerations

- Can social media be a contributing factor to workplace stress and can it constitute a form of workplace bullying?
  - What is social media?
  - Where is it allowed in the workplace?
  - How do we control it?



# DEFINITIONS Clause

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Need to define the following:

- Work related or occupational stress (WRS)
- Chronic stress
- Traumatic stress
- Workplace harassment
- Workplace bullying

# Work Related Stress Means

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- A condition, practices and events at work which may give rise to stress. WRS caused by or made worse by work

# Chronic Stress means

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- A response to emotional pressure suffered for a prolonged period of time in which an individual perceives he or she has little or no control
- A diagnosed mental stress injury that is caused by a 'substantial work-related stressor' arising out of and in the course of the worker's employment

# Traumatic Mental Stress Means

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- A sudden and unexpected traumatic event involving exposure to death or life threatening injury to a worker or co-worker
- Traumatic reactions within a short period of time (usually within a month) are called acute stress
- Reactions that develop later are called post traumatic stress

# REFERENCE Clause

- **OHSA**

- Employer duty section 25, supervisor duty s27 worker s.28 and s.50
- Workplace Harassment 32.0.1

- **Code**

- Ontario Human Rights Code s.10

- **WSIB**

- WSIB policy 15-03-02
- RTW guidelines

- **CSA**

- Z795-03 (code of work Injury or Disease Information)



# ROLES AND RESPONSIBILITIES

- Key concepts
  - Working together to reduce human and organisational cost of stress.
  - Starts with PROMOTING AWARENESS of situations that may cause workplace stress early on.
  - Involves creating supportive workplaces that facilitate staff who experience stress and promote a culture to report it.
  - Investigate it within reasonable timeframe (30 days) with written report and recommendations. Who is to investigate?
  - Senior management, managers, supervisors must be trained in how to recognise it...assess it...and control it (RAC).

# ROLES and RESPONSIBILITIES

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- Senior Management
- Supervisor / Managers
- Employees
- Safety Rep / JHSC
- Human Resources

# Senior Management - considerations

- Responsible for developing a procedures (processes) and resources
- Must apply principles of prevention - prevent improper conduct or behaviour (including stress and bullying)
- Develop an accountability system or disciplinary system
- Provide training on recognizing, assessing and controlling workplace stress (including OHR 101)

# Managers / Supervisors considerations

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- Attend training to recognise and deal with harassment and bullying
- Support employees who have been on sick leave and help to facilitate RTW
- Foster positive work environment (culture)
- Report to senior management any risks that are beyond your ability to control
- On harassment and bullying cases - report and investigate and control it.

# Employees - consideration

- Attended training
- Must not engage in improper conduct or behaviour which may be potential stressors
- Adhere to the company's 'Code of Conduct'
- Report work practices and events that cause undue or unnecessary stress to manager or in the event that the manager is the cause...report to senior management or MOL. (develop a reporting form for workers to complete)

# Investigations - Considerations

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For harassment complaints follow workplace harassment safety procedures.

For bullying complaints follow workplace violence

# PROCEDURES for Stress Management

## Scenario

A worker provides a medical note indicating “***the above patient is under my care and is suffering from trauma and stress related disorder and is to off work for the next two months and re-assessed***”

# Procedures - Communication is key!

- When medical certificate cites stress as reason
  - Call the worker
  - Be sensitive and supportive
  - Explain as per policy you will be keeping regular contact
  - Identify source of stress.
    - If employee perceives cause is work-related
      - You must work with them to identify the source and find acceptable solution(s) and;
      - Identify any measures that can be taken to enable RTW quickly and safely.
  - Plan the RTW after the stress-related illness and medical clearance is given.