

## Managing mental distress claims

Brooke Smith | March 29, 2011

“The reality of workplace stress is with all of us—at all times,” said Rhonda Shirreff, a labour and employment lawyer with Heenan Blaikie, speaking today at the firm’s 2011 Labour & Employment Seminar *Managing Claims and Controlling Costs with the WSIB*.

Stress is evident as employers place more demands on employees at work—and at home, thanks to smart-phones.

More often, stressed employees are turning to Ontario’s Workplace Safety and Insurance Board (WSIB), Shirreff said, to see if they can make a connection with stress and work, and claim benefits.

Disability arising from stress is difficult to measure objectively. But the *Workplace Safety Insurance Act* (WSIA) explicitly addresses entitlement to work-related stress.

Under Section 13(4) and (5) of the WSIA, an employee is entitled to benefits for mental stress caused by the following:

- an acute emotional response (a significant or severe reaction that results in a psychiatric or psychological response, which can be immediate or delayed);
- a sudden and unexpected traumatic event (under the WSIB’s policy, a “sudden and unexpected traumatic event” must be clearly and precisely identifiable, objectively traumatic and unexpected in the normal course of a worker’s employment or work environment—for example, witnessing a fatality at work, being the object of death threats or physical violence); and
- a reaction arising out of, and in the course of, the employee’s employment.

However, there is *no* entitlement for mental stress related to general workplace conditions or arising from decisions made in the daily life of an organization (such as demotion, discipline, changes in productivity expectations, terminations).

But the Workplace Safety and Insurance Appeals Tribunal is taking a more liberal approach to work-related stress claims, Shirreff said. This is particularly notable in cases of harassment—for example, intimidation by co-workers, outbursts by management (a bullying boss) or overzealous scrutiny by supervisors.

### **Be vigilant**

The scope of claims allowed for mental stress is broadening, so employers need to be vigilant.

Be aware of potential mental stress triggers. “You want respectful behaviour in the workplace from everyone—even the owner,” said Shirreff.

Listen to and address workers’ concerns with interest. “Take all complaints seriously.”

Look for ways to improve employee well-being. “Many employers have EAP systems in place and on-site wellness programs.”

Be proactive and be prepared. “It’s law and policy, and it’s a very broad interpretation of this.”

Shirreff left the audience with a good piece of advice: “Head off these claims before you ever get them.”