

Psychological Injuries Caused by Work-Related Harassment

What is a psychological injury?

For the purpose of the WCB's Psychological or Psychiatric Condition Policy (POL-01), a personal injury means a diagnosed physiological or psychological injury or condition caused by an accident arising out of and in the course of employment.

Is a diagnosis required for a psychological injury claim to be accepted?

All psychological injuries must be diagnosed by a psychologist or a psychiatrist.

What is the definition of workplace harassment?

The definition of workplace harassment can be found in the WCB's Psychological or Psychiatric Condition Policy (POL-01) and in the Workplace Harassment Regulations of the Occupational Health and Safety Act (OHS Act). The definition is the same in both reference documents.

"Harassment" means any inappropriate conduct, comment, display, action or gesture or any bullying that the person responsible for the conduct, comment, display, action or gesture or the bullying knows, or ought reasonably to know, could have a harmful effect on a worker's psychological or physical health or safety, and includes:

Conduct that is based on any personal characteristic such as, but not limited to:

- Race, creed, religion, colour
- Sex, sexual orientation, gender identity
- Marital status, family status, pregnancy
- Disability, physical size or weight
- Age, nationality, ancestry or place of origin

Inappropriate sexual conduct that is known, or ought reasonably to be known, to the person responsible for the conduct to be unwelcome. Inappropriate sexual conduct includes, but is not limited to:

- Sexual solicitation or advances
- Sexually suggestive remarks
- Jokes or gestures
- Circulating or sharing inappropriate images
- Unwanted physical contact

For greater certainty, harassment as defined above includes both:

- Repeated inappropriate conduct, comments, displays, actions or gestures or incidents of bullying that have a harmful effect on the worker's psychological or physical health or safety.
- A single occurrence of inappropriate conduct, comment, display, action or gesture or bullying that has a harmful effect on the worker's psychological or physical health or safety.

What are some examples of behaviours or comments that might constitute workplace harassment?

Behaviours or comments that might constitute workplace harassment include, but are not limited to:

- Making sexually suggestive remarks or advances.
- Verbal aggression or insults, calling someone derogatory names.
- Threatening a person or repeated occurrences of threats.
- Unwanted gestures or insults, inappropriate jokes, circulating inappropriate images.
- Spreading gossip or rumors.
- Using electronic communication to send threatening or intimidating messages.
- Vandalizing personal belongings.
- Making personal attacks based on someone's private life and/or personal traits.
- Isolating the worker.

What situations would not be considered harassment?

All reports of workplace harassment should be taken seriously. However, not every unpleasant interaction, instance of disrespectful behaviour, or workplace conflict is considered workplace harassment.

Expressing differences of opinion, offering constructive feedback, guidance or advice about work related behaviour, if undertaken in an appropriate manner, is not considered workplace harassment but may turn into harassment if steps are not taken to resolve the conflict.

Workplace harassment should not be confused with exercising managerial authority. Managers and supervisors have a broad range of responsibilities and are permitted to take reasonable action relating to the management of workers.

When done reasonably and fairly, the following actions should not be considered workplace harassment:

- With good reason, changing work assignments and job duties.
- Scheduling and workloads.
- Inspecting the workplace.
- Implementing health and safety measures.
- Delivering work instructions.
- Assessing and evaluating work performance.
- Disciplinary actions.
- Any other reasonable and lawful exercise of a management function

Will eligible work-related harassment claims be limited to incidents solely involving workers and coworkers?

Each claim will be considered based on the specific details of the situation. In some cases, incidents involving clients and members of the public may be accepted.

Here are some examples of potential claim scenarios. These fictional scenarios help to demonstrate what's likely to be covered.

Scenario 1

Tim can't stand one of his co-workers. Their desk is messy, they're lazy, and Tim has to carry their weight on team projects, but the supervisor refuses to fire the co-worker. Tim is fed up. Tim is diagnosed with Generalized Anxiety Disorder.

Likely claim outcome: Probably not accepted. Interpersonal conflict is not considered work-related harassment.

Scenario 2

Sandra is a nurse who works in a health care facility. Sandra and the other nurses in her work unit are social media friends. Michelle, Sandra's co-worker has been posting pictures of the clothes Sandra wears to social media with sarcastic remarks about them. The other nurses are adding their own remarks to social media as well. This continues for months, and Sandra is diagnosed with Adjustment Disorder with Anxiety.

Likely claim outcome: Probably accepted. The harassment although taking place on social media involves the members of the work unit and extends to the workplace.

Other examples are available in the **Psychological Injuries section** of the WCB website wcb.pe.ca

How does the WCB determine if the claim will be accepted?

Assessing a psychological injury claim resulting from work-related harassment is an objective analysis that needs to show:

- There has been an incident, either an acute reaction to a single occurrence or the cumulative effects of repeated work-related harassment.
- The incident caused personal injury.
- The injury arose out of and in the course of employment.

Are workers entitled to the benefit of the doubt for psychological injury caused by work-related harassment?

In a situation where the evidence for or against the issue is approximately equal in weight, the worker will be given the benefit of the doubt. This means that the decision will be made in favour of the worker.

What should I be doing in preparation for this change in coverage?

Preparing for this change in coverage means making sure your workplace is psychologically safe, that you have return to work programs in place to support recovery and that you have a Workplace Harassment Policy in place.

In PEI, employers have been required to have this policy in place since 2020. This policy must include a policy statement (purpose), definition of harassment, rights and responsibilities, complaints mechanisms, investigation procedures, confidentiality and review statements. If you don't have your policy in place yet, you can go to the WCB website wcb.pe.ca and look up "Guide to Workplace Harassment Regulations" to get started.

In all situations of work-related injury, physical or psychological, collaboration between the employer and the worker is key. Including psychological injury as part of your return to work programs, and setting those expectations for collaboration now, will help to support your workers and your workplace if an injury occurs.

What is the employer's responsibility when it comes to psychological injury caused by work-related harassment?

There is growing evidence that shows exposure to harassment in the workplace has serious negative outcomes for everyone. Highlighting awareness and demonstrating actions that prevent harassment sends a message that promotes a work environment where harassment is not tolerated and will be addressed if it does occur.

Employers can do this by:

- Having a Workplace Harassment Policy in place. This is required in PEI.
- Making sure that this policy is readily available to all workers.
- Treating all employees, clients, suppliers and contractors with respect.
- Refusing to tolerate harassment - put a stop to it immediately.
- Dealing with harassment allegations seriously, speedily, and confidentially.
- Reporting or investigating all complaints.
- Addressing workplace harassment by identifying the source and taking reasonable steps to remedy the effects of the harassment.
- Submitting an Employer's Report to the WCB when you know a worker has suffered a psychological injury caused by work-related harassment.

What resources does the WCB have to help employers make their workplaces psychologically safe?

The WCB website contains two dedicated sections to support employers make their workplaces psychologically safe: Psychological Injuries and Workplace Harassment. We invite you take advantage of the resources provides like guides, fact sheets, videos and links to external resources. More resources will be added as it becomes available.

What information can employers expect to be released to the worker or to the WCB regarding information shared during internal investigation evidence?

The employer must provide the result of the internal investigation and any findings or corrective action that has been or will be taken as a result. They are not required to provide the entire investigation report.

How will this change in coverage affect my WCB premiums?

Any new benefit creates new costs, and ultimately the system needs to remain sustainable into the future. As always, the WCB Board of Directors will meet to determine rates, guided by its funding policy. The Board takes a long-term view when they do that, informed by what is best for workers and employers.

For more information

If you have questions that aren't covered here or if you need more information, please contact us.



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