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### **Ontario Adds Nurses to the Work-Related PTSD Presumption Under the *Workplace Safety and Insurance Act***

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On May 8, 2018, the Ontario government quietly passed an amendment to the *Workplace Safety and Insurance Act, 1997* (“WSIA”) making it easier for nurses and front line healthcare workers to access WSIA benefits. Under the amendment these workers may now rely on a presumption a diagnosis of post-traumatic stress disorder (“PTSD”) was sustained “out of and in the course of employment.” The presumption (which is rebuttable) eliminates the need to prove a causal link between the PTSD injury and a workplace event, enabling these workers to access WSIA benefits more quickly.

#### **The reason to include nurses and frontline healthcare workers**

Prior to the amendment, nurses were excluded from the presumption PTSD arose out of and in the course of employment. The amendment seeks to address the evidence that these workers, given their routine exposure to traumatic stressors, are twice as likely as members of the general public to suffer PTSD. As a result of the amendment, the following workers, if diagnosed with PTSD, are now presumed to have sustained the disorder out of and in the course of employment:

- police officer
- firefighter (full-time, part-time, voluntary) and fire investigator
- emergency response team member
- paramedic
- emergency medical attendant
- ambulance service manager
- worker in a correction institution, secure custody or secure temporary detention
- dispatcher of police, firefighter and ambulance service
- member of the College of Nurses of Ontario who provide patient care
- provincial bailiffs
- probation officer and supervisor
- special constable

- police force member who performs work in a forensic identification unit or violent crime linkage analysis system.

### **Nature of the diagnosis**

The diagnosis of PTSD must be made by a psychiatrist or psychologist using the current DSM-5 diagnosis regime. Benefits will not be provided if it is shown the PTSD was caused by decisions or actions by the employer related to the *management of the employment relationship*. For example reasonable direction with respect to how work is to be performed, working conditions, or discipline or termination related to the job expectations.

Workers not listed above, or who are, but have not been diagnosed with PTSD under the DSM-5 regime, may still file a claim for compensation for mental stress. However, there is no presumption the mental stress is work-related, thus the onus is on the worker to show the mental health condition or injury arose out of his or her employment.

### **Considerations for employers**

Any employer whose workers are entitled to the PTSD presumption may experience an increase in the cost of WSIB premiums and worker absence. These employers might therefore consider steps to proactively address this, including:

- Review current support for and training of impacted workers to minimize the potential for PTSD in the first place. This is particularly important given the Minister of Labour may direct an employer to submit a PTSD prevention plan which may be published on the Ministry's website.
- Review return to work and accommodation/work modification policies to ensure a worker suffering from PTSD will have appropriate workplace support and modifications, so as to return to work quickly.
- Carefully review every PTSD claim to ensure the presumption correctly applies.

**To learn more and for assistance with all matters related to workplace safety and insurance, contact the experts at Sherrard Kuzz LLP.**

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