

● Construction Law Advisory

Date November 15, 2011

Subject **Workers Compensation Act Expands Coverage for Mental Stress**

On November 3, 2011, the provincial government of British Columbia introduced legislation to amend the *Workers Compensation Act*. The new legislation is intended to provide benefits to employees who suffer from post-traumatic stress, and from work-related stress. The amendments broaden the scope of the Workers Compensation regime from mainly physical injuries to work-related mental illnesses, and bring BC into line other provinces such as Alberta, Saskatchewan, Quebec, Yukon, Nunavut and the Northwest Territories who have already expanded worker's eligibility for workplace stress benefits.

The *Workers Compensation Act* currently allows for benefits to be paid to employees suffering from post-traumatic stress disorder but only if the disorder is caused by an acute reaction to a sudden and traumatic event. Other mental illnesses are not compensable, regardless of how they are caused. Bill 14 - *Workers Compensation Amendment Act, 2011* removes the requirement that the reaction be acute. Bill 14 also adds the provision to make compensable mental stress resulting from a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment.

Consequently, under Bill 14, workers compensation benefits will be available to workers who suffer a reaction to:

- one or more traumatic events arising out of and in the course of the worker's employment; or
- a significant work-related stressor, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment.

The amendments mean that employees who suffer from ongoing traumatic events in the workplace may be entitled to workers compensation benefits due to the expansion to cumulative coverage. WorkSafeBC will begin to develop policy on when mental stress will be eligible for compensation however other jurisdictions have accepted instances of mental stress which include:

- Emergency service personnel who gradually develop post-traumatic stress or another recognized stress disorder as a reaction to the traumatic events they may regularly experience as part of their job;
- Exposure to workplace violence or bullying;
- Ongoing sexual harassment.

Workers must still receive a recognized stress diagnosis to receive compensation, so being fired, disciplined or forced to adapt to a changing work environment would not qualify a worker for compensation.

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- The legislation has received full support in the Legislature and is expected to come into effect on January 1, 2012. Bill 14 may be read here: http://www.leg.bc.ca/39th4th/1st_read/gov14-1.htm

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