

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.

If the WCB confirms work-related harassment, they will work with you to see a psychologist for an assessment of a psychological injury.

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.

We understand it may be difficult to share details of what happened when it comes to work-related harassment. However, the WCB will need to have this information in order to make a decision on your claim.

When the WCB receives a claim for a psychological injury caused by work-related harassment, it will ask to confirm the details of the event, or events, by examining some or all of the following sources of information:

- WCB claim form for work-related harassment psychological injuries
- Available documentation like emails, texts, etc.
- Direct witness interviews and statements
- Employer investigation results
- Employer interview and statements

I have a sick note from my doctor that says I'm on sick leave. Can that be used as my diagnosis?

All psychological injuries must be diagnosed by a psychologist or a psychiatrist. A sick leave note is not proof of diagnosis.

How is a claim started?

You have the right to report a psychological injury caused by work-related harassment.

The quickest way to start the claim process is by going to the WCB website wcb.pe.ca and click on the button "File Your Claim."

You also have the option of filing your claim by completing a form that you can download on our website. Or, you can come to the WCB office to pick up a form.

It's important to tell your employer that you have a psychological injury caused by work-related harassment or bullying because your employer must also submit a report.

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.

If I decide to file a claim, at what point does my employer find out?

It's the worker's responsibility to report a psychological injury caused by work-related harassment to the appropriate person in the workplace as soon as possible. If the psychological injury is reported to the WCB and is not reported to the employer, the WCB will contact the employer to request that they submit an Employer's Report.

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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