December 5, 2023 |

Briefs

Submission to the WCB on Section 151, Time limits for filing a mental disorder claim

A pdf of the complete submission can be found here(195 KB).

The BC Federation of Labour (“BCFED,” “Federation”) is pleased to participate in the consultation on Section 151 -Time Limits for filing a mental disorder claim.

The Federation represents more than 500,000 members of our affiliated unions, from more than 1,100 locals, working in every aspect of the BC economy. The Federation is recognized by the Workers’ Compensation Board ("WCB”) and the government as a major stakeholder in advocating for the health and safety of all workers in BC and full compensation for injured workers and their surviving dependents.

Mental disorder claims, or as we prefer to call them, psychological injuries, have risen from 3,934 in 2017, to 6,352 in 2021. In BC, these claims at 4.5% in 2021 remain a small percentage of overall claims.

Psychological injury claims are reported in all industries. For those minority of occupations with presumptive coverage, the claims acceptance rates are higher than those in occupations without presumptive coverage.

Injured workers without presumptive coverage must prove their injury is work related, adding to the stigma and stress. In 2021, 1,655 psychological injury claims were suspended by workers. Workers who abandon their claims due to the many barriers do not receive the support and treatment they deserve.

Prior to a 2020 legislative change, the *Workers Compensation Act* (WCA) did not address the limitation period for mental disorder claims. Policy treated all injuries the same with a one-year time limit, adding another barrier to the psychological injury claim process.

In 2020, the government amended the WCA, Section 135(1) to address the limitation period for mental disorder claims. The WCA now specifies the time limit begins from the date of the worker's mental disorder.

An interim Practice Directive was developed in response establishing the date of mental disorder as the date of psychological change. The PRRD committed to monitoring practice and then developing proposed policy options.

The proposed amendments are intended to put into policy the approach currently taken in practice.

- The date of injury is the date the worker experienced a physiological change subsequent to a work incident; it may result from a specific incident or a series of incidents occurring over a period of time.
- The date of mental disorder is the date the worker experienced a psychological change subsequent to exposure to a work-related event(s) or stressor(s). There does not need to be a diagnosis of a mental disorder before the time period commences.
- For an injury and a mental disorder, the one-year time limit for filing an application for compensation commences on the date of physiological or psychological change respectively, which is not necessarily the same as the date of subsequent disablement.

The BCFED believes these proposed amendments recognizing the date of injury is the date the worker experiences physiological and psychological change is the date of injury and mental disorder will benefit workers who file claims for physical and mental disorder claims.

We are pleased to see the amendment proposing that there does not need to be a diagnosis for a mental disorder before the time period commences. The amendment removes a barrier for workers which could further delay a claim being filed.

Special circumstances

The proposed amendments include additional examples of how special circumstances may be considered when a claim is filed outside the one-year period. These are situations such as:

- the nature and symptoms of the injury, mental disorder, or occupational disease itself; and
- lack of awareness that an injury, mental disorder or occupational disease may be work-related.

Accepting the lack of awareness as a special circumstance is a welcome departure from some Workers' Compensation Appeal Tribunal decisions. We believe this is significant and recognizes the nature of mental disorder injuries.

The proposed amendments clarify how the word "precluded" is interpreted when a claim has been filed outside the time limit. The policy describes precluded to mean "to have made difficult or otherwise hindered." This description is consistent with the current practice directive and some WCAT decisions.

The BCFED believes this broader definition will be a benefit to injured workers.

Options

The BCFED believes that Option 2: Update policy on time limits for mental disorder claims is the preferred option.

We agree this option will provide greater consistency and transparency in the decision making in establishing the date of an injured worker's mental disorder for the purpose of establishing a time limit for filing a WCB claim.

We believe these policy amendments will bring us closer to a worker-centred approach to the process for filing mental disorder claims.