

YOUR MENTAL HEALTH TOOL KIT

FROM LEGAL ISSUES TO REAL-LIFE EXAMPLES, OUR EXPERTS BRING YOU THE RESOURCES YOU NEED FOR A MENTALLY HEALTHY WORKPLACE



MENTAL STRESS: Understanding the legal risks

By Julie Holden

According to the Mental Health Commission of Canada, reports released in 2011 and 2012 indicate that mental health illnesses accounted for roughly 30% of short- and long-term disability claims and are rated one of the top three drivers of such claims by more than 80% of Canadian employers.

Consider, then, what impact a recent decision by Ontario's Workplace Safety and Insurance Appeals Tribunal may have on this statistic. On April 29, 2014, the tribunal issued a decision regarding an employee's entitlement to benefits as a result of chronic mental stress under the *Workplace Safety and Insurance Act, 1997*. The tribunal found that the provisions in the act that limit entitlement to benefits for mental stress that "arises from an acute reaction to a sudden and unexpected event" violate the equality guarantee of the *Canadian Charter of Rights and Freedoms* and are, therefore, unconstitutional.

In short, the tribunal found the current definition to be discriminatory.

The decision was based on an employee's assertion that she endured years of mistreatment by a physician with whom she worked, which led to her diagnosis of anxiety and depression. (The employee and her co-workers reported this mistreatment to management, but little or no action was taken.)

What does this mean for employers? It means that, prior to this ruling, only those claims that resulted from an *acute* reaction to a sudden and unexpected event—such as a bank employee's mental illness as a result of a holdup—would prevail. The decision by the tribunal is a huge departure from this view, in that it held that the employee was entitled to benefits as a result of *chronic* mental stress. The ruling significantly expands the scope of entitlement for mental stress and will put increased pressure on employers to implement measures to reduce or


eliminate actions that may cause psychological harm to employees. While this is not a change to the legislation, it will have an impact on future workers' compensation claims in Ontario resulting from chronic mental stress.

Will claims increase? Time will tell. But some key questions arise as a result of the decision:

- How will employees prove that the mental illness occurred as a result of the workplace?
- Will workers' compensation claims increase, and short- and long-term disability claims relating to mental illness decrease?
- If so, what impact will this have on premiums paid by employers to insurers for disability plans and to the Workplace Safety and Insurance Board?
- Are we collectively equipped to manage these types of claims and help employees who are suffering from mental illness?

We don't yet have the answers to all of these questions, but, in the meantime, employers can take the following steps:

- 1) Involve senior leadership** - Leaders must be passionate about the health and welfare of their employees, take action, invest in programs and measure results.
- 2) Provide training to leaders at all levels** - Focus on education and communication to reduce the stigma associated with mental illness, and provide tools and resources.
- 3) Create a culture of health and employee well-being** - Revise programs and practices, and create new ones that align with an overall strategy of workplace health.
- 4) Implement the *National Standard of Canada for Psychological Health and Safety in the Workplace*** - This will go a long way in reducing the risk of increased mental health claims and providing an improved working environment for employees.

As they take these steps, employers need to understand that the mental health bar has been set higher. A psychologically safe workplace is no longer a nice-to-have—it's a must-have. 

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THE NATIONAL STANDARD:

What employers need to know

By Janet Jackson

Mental health is an issue that affects all employers, large and small. While there is no question that keeping employees healthy and productive is smart business, there are even more compelling reasons—evident in recent court settlements—for protecting employees' psychological health and safety.

According to a 2009 report, *Stress at Work, Mental Injury and the Law in Canada* by Dr. Martin Shain, a professor at the University of Toronto's Dalla Lana School of Public Health, Canada's legal system is clearly putting more onus on employers to provide a workplace that is not only *physically* safe but also *psychologically* safe. This trend is also evident in the new *National Standard of Canada for Psychological Health and Safety in the Workplace*, launched in January 2013 by the Canadian Standards Association and the Bureau de normalisation du Québec. Championed by the Mental Health Commission of Canada, the standard is a voluntary set of guidelines, tools and resources to protect mental health in the workplace.


While implementing the standard is easier than many employers might think, the challenge is often a lack of awareness of and attention to workplace mental health. This is especially the case among smaller employers, whose limited resources are often fully focused on day-to-day operations.

A recent survey by Empire Life of its small to mid-size plan administrators highlights this challenge. While 72% reported that their organizations have the means to identify patterns of negative conduct (e.g., managers and others who lose their temper and shout, ridicule, humiliate, exhibit discriminatory attitudes/conduct or avoid dealing with conflict), only 64% reported having the means to resolve such situations promptly, effectively

and sustainably. More importantly, only 50% said their managers are capable of skilfully handling difficult conversations or removing barriers to communication. And just 43% said their managers are capable of developing action plans to address difficult situations—and even fewer are able to follow through on those plans.

Clearly, managers' difficulty in handling challenging workplace situations presents potentially serious issues for employers. The *Stress at Work* report makes it clear that managers who, for example, impose unreasonable demands, prevent workers from being able to control their work, or fail to recognize workers' rights or achievements contribute to common workplace conditions such as depression, anxiety and burnout. The impact on employee engagement, loyalty, absenteeism and productivity is well known; the legal and financial risks are only now beginning to become evident.

There are a number of steps that employers—even the smaller ones—can take to begin promoting a psychologically safe workplace (see "The 4 Bs of Psychological Safety at Work"). First and most important is to talk to managers about the new standard and their role in implementing it in the organization. But this doesn't necessarily mean having to invest in a lot of added resources. Often, resources are already available—through the employer's employee assistance program, for example—to give managers coaching and guidance to build the skills they need.

Ultimately, it's about dialogue among managers and employees about how to work together for a psychologically healthy workplace. Once everyone starts *talking* about the standard, they are, in effect, beginning to *apply* it. 

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THE 4 Bs OF PSYCHOLOGICAL SAFETY AT WORK

By Martin Shain, SJD

1. BE AWARE Employers should assume that the contract of employment includes an *implied promise of a psychologically safe system of work* that requires a floor standard of fair, civil and respectful conduct. This is true in both unionized and non-unionized workplaces. The rule in practice appears to be that employers retain the duty to provide a psychologically safe system of work throughout all phases of the employment relationship, including times when employees may be under the temporary supervision of third-party agents such as insurers, benefits administrators, employee assistance programs, return-to-work specialists and contracted medical experts.

2. BE FAIR Accept that the foundation of everyday fairness in the workplace is the *basic legal requirement to recognize and accommodate up to a reasonable standard the legitimate interests and rights of others*. Accept that, in order to achieve this floor standard of fairness, it is necessary for those who manage and supervise others to have *basic interpersonal skills* that include the ability to actively listen, facilitate vital conversations and elicit information in a careful manner.

3. BE CAREFUL The golden rule of the psychologically safe workplace is to avoid doing psychological harm to another person where a reasonable person in the same situation could or should have seen it coming. In other words, *avoid reasonably foreseeable harm* (which roughly means harm that a panel of 12 ordinary people from your workplace would have seen coming).

4. BE VIGILANT Be on the *lookout for signs of conflict or other interpersonal tension* among employees, and between employees and their managers or supervisors. Act upon it when you see it. The responsibility to be vigilant and proactive in this regard is a key element of the duty to provide a psychologically safe workplace.

BELL CANADA: The case for mental health training

By Paula Allen



knowing when and how to reach out for help. To date, more than 4,000 Bell people leaders have gone through the program.

The mandatory training was so successful that Bell went even further. “Leader demand for deeper knowledge, along with more practical scenarios, was one of the reasons Bell decided to extend the coaching. The other reason was to ensure that Bell was meeting the requirements of the *National Standard of Canada for Psychological Health and Safety in the Workplace*,” says Dutil.

Bell has partnered with Queen’s University and Morneau Shepell to launch the Mental Health Workplace Training program, the first university-certified workplace mental health training program aligned with the National Standard. This enhanced program—available to all employers and their employees—builds on the previous training with three modules aimed at extending the scope and influence of Bell leaders by giving them additional skills, strategies and resources. Outcomes of the new training include leaders developing coaching skills and effective management practices focused on early intervention, recovery and return to work. All Bell team leaders are required to complete the first two modules. Upon completion of the optional third module, participants receive a certificate from Queen’s.

While Bell has made considerable progress in increasing awareness and reducing stigma, Dutil emphasizes that there is more to be done. “But together, we can make a difference. The training changes the way our leaders face these situations—they are more empathetic and manage efficiently and uniformly across the organization, and they are better equipped to support our employees. This is a critical step in addressing workplace mental health effectively.”

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When it comes to tackling mental health issues, Bell Canada is one organization that’s putting its money where its mouth is. Its annual Let’s Talk campaign is aimed at reducing the stigma of mental health—and, since 2010, it has committed more than \$67.5 million for mental health initiatives.

With respect to workplace mental health, Bell realized that it needed to lead by example. Moreover, there was a good business case for doing so: the Mental Health Commission of Canada estimates that 500,000 Canadians miss work due to some form of mental illness every week.

Lucie Dutil, vice-president, HR, with Bell Canada, describes the company’s initial pledge to better workplace health as a little daunting. “We realized that there were no workplace best practices in mental health. An important part of our work is to develop and integrate those best practices into Bell. We knew from Day 1 that was going to be a long-term investment and that change would take time. After two-and-a-half years, we can already see a big difference at Bell.”

Bell’s initial focus was on training for leaders: understanding mental health; reducing stigma; recognizing the early signs; identifying the dos and don’ts; and