

October 15, 2018

The Honourable Sherry Gambin-Walsh
Minister of Service Newfoundland and Labrador
Confederation Building
P.O. Box 8700
St. John's NL A1B 4J6

RE: WorkplaceNL PTSD Presumptive Legislation

Minister Gambin-Walsh:

Promoting mental health, increasing efforts to prevent workplace mental stress, and providing support for employees struggling with mental health concerns is in the best interest of workers, employers, and the province as a whole. For these reasons, the Employers' Council supported the majority of recent changes to WorkplaceNL's mental stress policy, EN-18. We are concerned, however, that the ongoing NAPE advertising campaign, "Let's Get It Right", that calls for "workplace mental health legislation" contains a number of inaccuracies and oversimplifications that are improperly informing public opinion and debate on this issue. We want to ensure that you are provided with accurate and balanced information before a decision on this legislation is made. The following are some inaccuracies and misconceptions contained in this campaign:

Fact: NAPE ads are calling for workplace mental health legislation that already exists. While NAPE's campaign is designed to encourage government to pass *presumptive* legislation, the ads and subsequent media coverage call simply for "workplace mental health legislation" compensating for mental health injuries/illnesses for all workers. They give the impression that such coverage is currently unavailable. This is inaccurate. Recent changes to WorkplaceNL's mental stress policy broadened coverage to include first responders, who were previously ineligible because trauma was considered an "inherent risk" of their occupation. These changes also recognized that reaction to traumatic events may be cumulative, broadened the definition of what constitutes a traumatic event, and increased the types of resulting mental disorders that are compensable. Workers in **ANY** job can now access worker's compensation benefits for an acute stress disorder, anxiety or depressive disorder, PTSD and a variety of mental health conditions resulting from a traumatic work related incident(s), as diagnosed by a psychiatrist, psychologist, physician, or nurse practitioner.

Misconception: That first responders or other workers with mental health claims are subjected to long wait times or excessive red tape. NAPE are publicly using reports from prior to changes to mental stress policy EN-18 to highlight issues with access that have already been addressed through policy changes. With changes to the mental stress policy indicated above, accessing worker's compensation benefits for mental disorders caused by traumatic workplace incident(s) is no more challenging than it is for any other physical injury claim. It is WorkplaceNL policy that where the evidence on each side of an issue is equally balanced the issue shall be decided in favour of the worker. Approximately 97% of all claims are accepted by WorkplaceNL, and on average the time to first payment takes about 15 days. Diagnosis can come from a physician or nurse practitioner. Now that these changes have been implemented, there is no evidence to suggest that workers with legitimate mental stress claims will have lengthy wait times or be subjected to excessive "red tape and bureaucracy" to access worker's compensation.

Inaccuracy: That presumption currently exists for physical injury claims. On multiple occasions NAPE president Jerry Earle has publicly stated that presumptive coverage exists for physical injuries. This is incorrect. Presumptive legislation provides benefit without evidence or investigation to ensure a work related cause. With the exception of some occupational specific cancer presumptions, documentation of a work related cause is required for all other worker's compensation claims. This does not mean that workers are not covered for physical injuries, or that preventative supports are not provided. It is completely reasonable and necessary to maintain the same requirement for mental stress claims.

Misconception: That presumptive legislation will increase access to supports and prevention. Some stakeholders discuss “presumptive legislation” as the solution to stigma, as a method to increase access to supports and early intervention, and as necessary for the development of prevention policy. However, these issues are unrelated to presumptive legislation. Presumptive legislation provides financial benefit without evidence of work relatedness. It does not directly facilitate awareness, prevention, or front-end supports. Policy surrounding prevention of workplace related mental illness/injury should, and **IS**, being developed independent of presumptive legislation. Workplace mental health is a large part of employer policy and was a part of WorkplaceNL’s recent prevention strategy. There is no evidence to support the assertion that coverage being “presumptive” will increase the timeliness or access to appropriate treatments, or that issues with access to support even exist now that changes to WorkplaceNL’s mental stress policy have been made.

Inaccuracy: That the provision of presumptive mental health legislation covering all workers is fair. Given all other injuries/illnesses must be work related to receive coverage under worker’s compensation, presumptive legislation inherently privileges one class of injuries or workers over others in the system. For this reason, the Employers’ Council is opposed to presumptive legislation as a general principle. Given our history of excessive cost and claim duration, implementing PTSD presumptive coverage in NL would be drastic. In particular, implementing presumptive legislation for all mental stress claims, for all occupations, as is proposed by NAPE, would place the cost of all mental health treatment for the majority of the population on employers through the worker’s compensation system. This would be patently unfair. Workers compensation is a workplace insurance system. Injuries and illnesses that do not arise out of the course of employment are legally non-compensable. Deviations from this principle jeopardize the integrity of the system and all worker benefits. To ensure that those most in need of supports continue to be able to avail of them, it is essential that changes to Workplace NL are affordable, manageable, and sustainable. The needs and interests of all stakeholders must be given due consideration.

There is a need to progress incrementally in order to monitor the impact of recent changes. Instead of removing safeguards to ensure worker’s compensation claims are work related, we recommend that government celebrate and promote the changes that have been made, allow time for them to be implemented, and focus on improving access to mental health supports to the benefit of all workers and citizens.

We hope that WorkplaceNL or government will publicly address the inaccuracies contained in the NAPE campaign, or, at a minimum, that this information will be considered in your decision making on this legislation. I encourage you to read our submission to WorkplaceNL’s consultation on PTSD coverage, attached, and also available on our website at www.nlec.nf.ca/publications/. If you have any questions on this topic or wish to discuss any issues further, I can be reached at 709-368-6532 x 221.

Sincerely,



Richard Alexander
Executive Director