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Bill 267

**An Act to amend the Workplace Safety and Insurance Act, 1997 to establish
a presumption for certain workers respecting chronic or traumatic mental stress
in connection with the COVID-19 pandemic**

Miss M. Taylor

Private Member's Bill

1st Reading March 23, 2021

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

Currently, the *Workplace Safety and Insurance Act, 1997* provides that a worker is entitled to benefits under the insurance plan for chronic or traumatic mental stress arising out of and in the course of the worker's employment.

The Bill amends the Act to provide that the chronic or traumatic mental stress of certain individuals is presumed to have arisen out of and in the course of the individuals' employment. The presumption applies to any individual who, at any time during the COVID-19 pandemic in Ontario, worked for a business that the Government of Ontario listed as essential in an order under the *Emergency Management and Civil Protection Act* or the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, or who was otherwise considered essential, including the individuals listed in the Bill. The Lieutenant Governor in Council is given the power to prescribe additional individuals for the purpose of the presumption.

Transitional matters are provided for.

**An Act to amend the Workplace Safety and Insurance Act, 1997 to establish
a presumption for certain workers respecting chronic or traumatic mental stress
in connection with the COVID-19 pandemic**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 Section 13 of the *Workplace Safety and Insurance Act, 1997* is amended by adding the following subsections:

Presumption, chronic or traumatic mental stress

(4.1.1) Unless the contrary is shown, a worker's chronic or traumatic mental stress is presumed to have arisen from and in the course of the worker's employment if the worker,

- (a) is an individual described in subsection (6) as an individual to which this subsection applies; and
- (b) would otherwise be entitled to benefits under the insurance plan.

Application of presumption in subs. (4.1.1)

(6) Subsection (4.1.1) applies to any individual who, at any time during the COVID-19 pandemic in Ontario, worked for a business that the Government of Ontario listed as essential in an order under the *Emergency Management and Civil Protection Act* or the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, or otherwise considered essential, including the following individuals:

1. An individual who is,
 - i. a regulated health professional, or
 - ii. an unregulated health care provider working in health care delivery, either directly or indirectly.
2. An individual who works for a manufacturer or distributor of pharmaceutical products or medical supplies, including medications, medical isotopes, vaccines, antivirals, medical devices, sanitizers and disinfectants.
3. An individual who works in a pharmacy as defined in the *Drug and Pharmacies Regulation Act*.
4. An individual who works in an establishment where goods or services are sold or offered for sale to the public, if a pharmacy as defined in the *Drug and Pharmacies Regulation Act* is located within the establishment.
5. A police officer as defined in the *Police Services Act*.
6. A special constable appointed pursuant to section 53 of the *Police Services Act*.
7. A member of a police force other than a police officer as defined in the *Police Services Act*.
8. A First Nations Constable appointed pursuant to section 54 of the *Police Services Act* or a member of a police service in which policing is delivered by First Nations Constables.
9. A provincial offences officer as defined in the *Provincial Offences Act*.
10. An individual employed by the Ministry of the Attorney General or a municipality in Ontario who is required to work on site to support the administration of the Ontario Court of Justice, the Superior Court of Justice or the Court of Appeal for Ontario, including,
 - i. court services representatives, court and client representatives, court clerks, court registrars, court reporters, enforcement officers and any other administrative officers and employees that are considered necessary for the administration of the courts,
 - ii. business professionals and Crown prosecutors of the Criminal Law Division, and
 - iii. employees of the Victim/Witness Assistance Program.

11. An individual who provides essential justice-related frontline services to Indigenous persons involved in the justice system and who is employed by an Indigenous community or Indigenous organization through a program funded by the Ministry of the Attorney General, including,
 - i. the Indigenous Courtwork Program,
 - ii. the Indigenous Bail Verification and Supervision Program, or
 - iii. the Indigenous Bail Beds Program.
12. An individual who is engaged in the delivery of frontline victim services funded by the Ministry of the Attorney General under the Ontario Victim Services program.
13. An individual employed as a firefighter as defined in the *Fire Protection and Prevention Act, 1997*.
14. An individual who is,
 - i. engaged in providing fire protection services as defined in the *Fire Protection and Prevention Act, 1997*,
 - ii. employed in a fire department as defined in the *Fire Protection and Prevention Act, 1997*, or
 - iii. employed in the Office of the Fire Marshal and whose duties include being a fire investigator or supervising or managing fire investigators.
15. A paramedic as defined in the *Ambulance Act*.
16. A coroner as defined in the *Coroners Act*.
17. A worker in a correctional institution as defined in the *Ministry of Correctional Services Act* or an independent contractor who supplies services to correctional institutions, including, but not limited to, employees of Trilcor.
18. Probation and parole officers as described in the *Ministry of Correctional Services Act*, institutional liaison officers, court liaison officers, individuals employed as assistant area managers and area managers of staff at probation and parole offices and the administrative and support staff at these offices.
19. An individual employed in the Institutional Services Division of the Ministry of the Solicitor General, including a person employed in a correctional institution as defined in section 1 of the *Ministry of Correctional Services Act*.
20. An individual employed in the Operational Support Division of the Correctional Services Recruitment and Training Centre in the Ministry of the Solicitor General who,
 - i. provides facilities or maintenance services, or
 - ii. is a Senior Staff Development Officer or Manager of Customized Training.
21. An employee of Compass Group Canada Ltd. who works at or provides services in relation to the Cook Chill Food Production Centre.
22. An individual employed in the Ministry of the Solicitor General who performs one or more of the following functions for the Institutional Services Division or Community Services Division:
 - i. Performing electronic monitoring services.
 - ii. Performing CPIC searches.
 - iii. Preparing community supervision orders.
23. An individual employed in the Ministry of the Solicitor General at the Centre for Forensic Sciences who is involved in supporting and conducting forensic testing and analysis.
24. An individual employed in the Ministry of the Solicitor General at the Provincial Forensic Pathology Unit.
25. An individual employed in the Provincial Emergency Operations Centre or at the Ministry of the Solicitor General's Emergency Operations Centre.
26. An animal welfare inspector appointed pursuant to the *Provincial Animal Welfare Services Act, 2019* or an individual employed by the Ministry of the Solicitor General in the Animal Welfare Services Branch who is directly involved in supporting animal welfare inspectors.
27. An individual employed in the operation of,
 - i. a place of secure custody designated under section 24.1 of the *Young Offenders Act (Canada)*, whether in accordance with section 88 of the *Youth Criminal Justice Act (Canada)* or otherwise, or
 - ii. a place of secure temporary detention as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*.

28. Persons, other than foster parents, who deliver or directly support the delivery of residential care, treatment and supervision to children and young persons residing in residential settings licensed under the *Child, Youth and Family Services Act, 2017*.
29. An individual employed by a children's aid society designated under section 34 of the *Child, Youth and Family Services Act, 2017* to provide services necessary for the performance of a children's aid society's functions, as set out in section 35 (1) of that Act.
30. An individual employed by a service agency as defined in section 1 of the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*, to provide services and supports, within the meaning of section 4 of that Act, to adults with developmental disabilities.
31. An individual who is engaged in the delivery of services funded by the Ministry of Children, Community and Social Services under the Violence Against Women Support Services or the Anti-Human Trafficking Community Supports programs.
32. A staff member of a transfer payment recipient funded by the Ministry of Children, Community and Social Services who is engaged or employed to deliver interpreting or intervenor services for persons who are deaf, deafened, hard of hearing or deafblind.
33. Persons employed in the Direct Operated Facilities Branch of the Ministry of Children, Community and Social Services.
34. An individual who performs work that is essential to the delivery of core services in a municipality or First Nation community, as determined by the municipality or First Nation.
35. An individual who performs work of a critical nature in their service area or community, as determined by the Minister of Education or his delegate in consultation with the relevant service system manager or First Nation as those terms are defined under the *Child Care and Early Years Act, 2014*.
36. An individual who works in a child care centre or who otherwise provides child care in accordance with the requirements in an order under the *Emergency Management and Civil Protection Act* or the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*.
37. A staff member of a school as defined in the *Education Act* who provides, or supports the provision of, in-person instruction at a school to pupils with special education needs who cannot be accommodated through remote learning.
38. A staff member of a school as defined in the *Education Act* who,
 - i. provides or supports the provision of in-person teaching or instruction in a school that is permitted to provide in-person teaching and instruction under an order under the *Emergency Management and Civil Protection Act* or the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, and
 - ii. has a child who is enrolled at a school that is not permitted to provide in-person teaching or instruction under an order under the *Emergency Management and Civil Protection Act* or the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* and who is not receiving in-person teaching or instruction.
39. A member of the Canadian Armed Forces or an employee of the Department of National Defence.
40. All persons employed in the Ministry of Natural Resources and Forestry who are engaged in,
 - i. prevention, mitigation, preparedness, response or recovery actions, as applicable, with respect to,
 - A. fires as defined in the Forest Fires Prevention Act,
 - B. floods,
 - C. dam failures, or
 - D. emergencies relating to oil and gas exploration or production, hydrocarbon underground storage, and salt solution mining, or
 - ii. the provision of support services to Conservation Officers through the operation of the Ministry's Provincial Communications Unit.
41. A person who holds a licence issued under section 13 of the *Private Security and Investigative Services Act, 2005* to act as a security guard.
42. Staff as defined in the *Retirement Homes Act, 2010*.
43. Licensees as defined in the *Retirement Homes Act, 2010* who are individuals and who work or provide services at a retirement home.
44. Staff as defined in the *Long-Term Care Homes Act, 2007*.

45. An individual who is an inspector appointed under the *Food Safety and Quality Act, 2001* or a field-person or officer appointed under the *Milk Act*.
46. An individual employed in the Ministry of Labour, Training and Skills Development in Radiation Protection Services.
47. An individual who is employed by any of the following entities to carry out work that is deemed by the entity to be critical to the ongoing generation, transmission, distribution and storage of electricity, or the ongoing refining, transmission, distribution and storage of gas or other type of hydrocarbon, sufficient to meet the demands of the province of Ontario:
 - i. The Independent Electricity System Operator.
 - ii. A generator, transmitter or distributor within the meaning of the *Electricity Act, 1998*.
 - iii. A gas distributor or gas transmitter within the meaning of the *Ontario Energy Board Act, 1998*.
 - iv. A distributor as defined in subsection 40 (3) of the *Technical Standards and Safety Act, 2000* that is not already described in subparagraph ii or iii.
 - v. An oil refinery.
48. An individual who performs work that is essential to the operation of,
 - i. a municipal drinking water system as defined in section 2 of the *Safe Drinking Water Act, 2002*,
 - ii. a non-municipal year-round residential system as defined in section 1 of Ontario Regulation 170/03 (Drinking Water Systems) made under the *Safe Drinking Water Act, 2002*, or
 - iii. a wastewater treatment facility or a wastewater collection facility as those terms are defined in section 1 of Ontario Regulation 129/04 (Licensing of Sewage Works Operators) made under the *Ontario Water Resources Act* and to which that Regulation applies.
49. An individual employed in a business involved in the collecting, transporting, storing, processing, disposing or recycling of any type of waste.
50. An employee of a hotel or motel that is acting as an isolation centre, health care centre, vaccine clinic or that is housing essential workers.
51. An individual working in a homeless shelter or providing services to homeless persons.
52. An individual who works for a business that processes, manufactures or distributes food or beverages.
53. An individual who works in a supermarket, grocery store, convenience store, farmer's market or other store that primarily sells food.
54. An individual who works at a business that produces food, beverages, or agricultural products including plants, including by farming, harvesting, aquaculture, hunting or fishing.
55. An individual who works at a business that supports the food or agricultural products supply chains.
56. An individual who is engaged in work that involves driving a Class A or D motor vehicle as described in Ontario Regulation 340/94 (Drivers' Licences) made under the *Highway Traffic Act*.
57. Members, officers and special constables appointed under the *Royal Canadian Mounted Police Act* who are working in Ontario.
58. Officers as defined in the *Customs Act* (Canada) who are working in Ontario.
59. Employees of the Canada Post Corporation who are working in Ontario.
60. Any other individual prescribed in a regulation made by the Lieutenant Governor in Council.

Pending claim before Board

(7) If, on or after January 25, 2020, a worker to which subsection (4.1.1) applies filed a claim for entitlement to benefits relating to chronic or traumatic mental stress and the claim is pending before the Board on the day on which the *Workplace Safety and Insurance Amendment Act (Access to Mental Health Support for Essential Workers), 2021* receives Royal Assent, the Board shall decide the claim in accordance with this section.

Pending claim before Appeals Tribunal

(8) If, on or after January 25, 2020, a worker to which subsection (4.1.1) applies filed a claim for entitlement to benefits relating to chronic or traumatic mental stress and the claim is pending before the Appeals Tribunal on the day on which the *Workplace Safety and Insurance Amendment Act (Access to Mental Health Support for Essential Workers), 2021* receives Royal Assent, the Appeals Tribunal shall decide the claim in accordance with this section.

Denial vacated

(9) If, on or after January 25, 2020, a worker to which subsection (4.1.1) applies filed a claim for entitlement to benefits relating to chronic or traumatic mental stress and the claim was denied by the Board or by the Appeals Tribunal before the day on which the *Workplace Safety and Insurance Amendment Act (Access to Mental Health Support for Essential Workers), 2021* receives Royal Assent, the denial is vacated and the worker may refile a claim to be decided in accordance with this section.

2 Section 183 of the Act is amended by adding the following subsection:**Presumption, chronic or traumatic mental stress**

(4.1) The Lieutenant Governor in Council may make regulations prescribing individuals for the purpose of paragraph 60 of subsection 13 (6).

Commencement

3 This Act comes into force on the day it receives Royal Assent.

Short title

4 The short title of this Act is the *Workplace Safety and Insurance Amendment Act (Access to Mental Health Support for Essential Workers), 2021*.