

Reasonable Administrative Action Exclusion for Psychological Injury

The 1981 Act excludes stress related claims which result from various administrative actions (mostly disciplinary) undertaken by a worker's employer, or that are due to the worker's demotion, dismissal or retrenchment or not being promoted, reclassified, transferred or granted leave of absence or any other benefit in relation to the employment.

The *WCIMA23* extends this exclusion to any psychological or psychiatric disorder arising out of formal appraisal of a worker's performance.

Key Points

Act ref: s. 7, s. 552

- Any psychological or psychiatric disorder that a worker experiences will not be an injury from employment if it results wholly or predominantly from formal administrative action (unless the administrative action is unreasonable and harsh on the part of the employer).
- Administrative action includes formal performance appraisal, along with the other matters that are specified in the 1981 Act.
- Administrative action includes any of the following actions:
 - formal appraisal of the worker's performance
 - formal suspension or disciplinary action
 - anything done in connection with a formal action described above
 - anything done in connection with the worker's demotion, dismissal or retrenchment, or the worker's failure to obtain a promotion, reclassification, transfer or other benefit, or to retain any benefit, in connection with the worker's employment.
- The exclusion does not apply if the administrative action is unreasonable and harsh on the part of the employer, or the psychological or psychiatric disorder does not result wholly or predominantly from the administrative action.

Questions & Answers

Q. Will the provisions of the *WCIMA23* impact a pending psychological injury claim under the 1981 Act when the new Act comes into operation?

A. No. The *WCIMA23* (s. 552) provides that the reasonable administrative action exclusion under the *WCIMA23* does not apply to a pending psychological injury claim when the new Act comes into operation. The exclusion under the 1981 Act will still apply to the pending claim.

Q. Can I make a claim if I suffer a psychological injury and I believe my employer's behaviour or conduct caused the injury?

A. Yes. The exclusion only applies to psychological or psychiatric disorders wholly or predominantly arising out of reasonable administrative action. The exclusion does not extend to psychological claims associated with other conduct of the employer (e.g. bullying), or administrative action that is unreasonable and harsh on the part of the employer.

Q. Does the exclusion apply if an employer provides informal counselling or has informal discussions about performance?

A. No. The exclusion only applies to formal and reasonable administrative action and anything done in connection with any formal and reasonable administrative action taken by the employer.