

ACC Cover for Work-Related Mental Injury: Potential for Double Recovery under the Accident Corporation Act 2001 and the Employment Relations Act 2000?

The District Court has ruled that a woman subject to workplace bullying was entitled to ACC cover in connection with her work-related mental injury.¹ This begs the question of whether bullied employees who receive ACC cover for mental injury are still entitled to compensation under s 123(1)(c)(i) of the Employment Relations Act 2000 – a provision designed to compensate employees who suffer hurt, humiliation and loss of dignity in connection with their employment.

The facts

Yvette Phillips was an experienced ACC worker who first began working for the corporation in 2014. In 2017, she relocated to Christchurch with her family for her dream job within ACC. Prior to shifting to Christchurch from Whangārei, Phillips had expressly asked whether her job could be affected by ACC's upcoming plans to restructure. She was told it would not be.

ACC's restructuring process commenced in 2019. Phillips was informed she would have to apply for alternative roles or face redundancy. Phillips did so, but was unsuccessful in multiple applications. She subsequently accepted a role two bands below her current position to ensure her continued employment.

Phillips later emailed her manager outlining her concerns with how her redeployment had been handled.

A face-to-face meeting then took place with an HR representative, in which Phillips expected to receive clarification as to why she had been unsuccessful in her applications for multiple different roles. Instead, Phillips was questioned as to why she wanted this information, and was told she should refrain from any attempt to "relitigate" the outcomes of the restructure.

The second significant event in question involved Phillips entering the workplace to collect her work laptop. She was on stress leave at the time as a result of the restructure process, but needed her laptop to do a small job for her boss. When she entered the workplace, she was confronted by her new team leader and another manager in front of approximately 20 other staff. They asked Phillips why she needed her laptop, and she explained. While this was happening, another manager phoned Phillips' boss, and proceeded to approach Phillips in front of all other staff. They told Phillips her boss had never asked her to do a job, that she could not take the laptop, and that she had no need for it since she was on stress leave. Phillips was left humiliated, and also confused as to why her boss had lied to other staff about the job they had asked her to do.

Phillips files an ACC claim

As an employee of ACC, Phillips knew her entitlements under the ACC regime back to front. Following a medical case review from an occupational physician, she knew she was entitled to cover for her work-related mental injury and filed a claim for acute stress, post-traumatic stress disorder, and reactive depression. Her claim was handled by Wellnz given that she was employed by ACC. Wellnz was further provided with medical notes from a general practitioner and a psychiatrist, both of which made a similar diagnosis to the occupational physician.

To Phillips's shock, her ACC claim was denied. Wellnz informed Phillips the events experienced by Phillips at

¹ *Phillips v Accident Compensation Corporation* [2022] NZACC 100.

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work were not severe, and would not be reasonably expected to cause mental injury.

Phillips ultimately appealed this decision to the District Court when her application for an initial review was unsuccessful.

Work-related mental injury in accordance with s 21B Accident Compensation Act 2001?

The legal issue for the Court to determine was whether Phillips had suffered a work-related mental injury pursuant to s21B of the Accident Compensation Act 2001. The provision required Phillips to establish the following three elements:

1. An identifiable mental injury

As part of a medical assessment for the purposes of establishing cover, a doctor had diagnosed Phillips with acute stress reaction, depression, and symptoms of post-traumatic stress. A psychiatrist had further diagnosed Phillips with major depression, anxious distress, panic disorder, and unspecified trauma related disorder. Accordingly, the Court had no issue in finding that Phillips had suffered an identifiable mental injury.

2. That the injury was caused by a single event or series of events

The Court found that Phillip's mental injury was caused by a series of events, with the aforementioned two as the most notable. The Court placed emphasis on the fact that both of the events occurred in the context of a new, unfamiliar environment for Phillips. Herself and her family had relocated from Whangārei to Christchurch for Phillips's role – a city the family previously had no connection with. The move had placed pressure on Phillips and her family, and the treatment of Phillips throughout the restructuring process had turned what

Phillips previously thought would be a dream job into a nightmare.

3. That the events could reasonably be expected to cause mental injury to people generally

The Court took the time to explain the exact question to be asked in relation to this requirement of s21B. As stated by the Court, the test was whether or not people generally in Phillips's position would suffer mental injury in the way Phillips had. Applying this to Phillips circumstances, the question became:

"Would people generally, who had uprooted family from Whangārei to pursue a dream job in Christchurch, suffer mental injury from the events the appellant went through?"²

The Court answered in the affirmative. Phillips was rendered more vulnerable by her circumstances. Against this backdrop, the meeting regarding Phillips's redeployment was "confrontational and aggressive", which reasonably left Phillips feeling "ambushed and blindsided".³ In a similar vein, the laptop incident reasonably left Phillips feeling "humiliated and demeaned" – feelings which the Court considered anyone in her position would reasonably feel.⁴

The Court allowed Phillips's appeal. She had satisfied the requirements of s21B, which entitled her to ACC cover for her work-related mental injury.

Potential for double recovery?

We often see personal grievances raised in connection with workplace bullying where the employee has not applied for ACC cover as a result of the mental harm suffered. Unlike Phillips, many are not aware that they may in fact be eligible for compensation of this nature. Instead, compensation is often sought under s123(1)(c)(i) of the Employment Relations Act 2000 to recognise the hurt, humiliation, and loss of dignity

² At [123].

³ At [125].

⁴ At [126].

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suffered as a result of the bullying.

The District Court's decision represents confirmation of another avenue for employees who suffer mental harm as a result of their employment, and is likely to give other employees in a similar situation confidence in applying for ACC cover of this nature.

This begs the question of how compensation under s123(1)(c)(i) would be treated where an employer receiving ACC cover for mental injury also pursues a personal grievance seeking compensation under s123(1)(c)(i). In statute, the starting presumption is that no person can bring additional legal proceedings relating to a matter for which ACC has already compensated them for.⁵ An exception to this is carved out whereby an employee receiving ACC cover for a work-related injury is not prohibited from raising a personal grievance arising from their employment.⁶ It follows that an employee in a situation like Phillips may be entitled to further compensation for the mental harm suffered in the employment jurisdiction. Such a situation, however, has not arisen in the case law.

Want to know more?

If you have any questions about the implications of the District Court's decision for you, please contact our specialist [Employment Team](#).

⁵ Accident Compensation Act 2001, s 317(1)(a).

⁶ Accident Compensation Act 2001, s 317(2)(c).