
UNFINISHED BUSINESS

Bill No: SB 623
Author: Laird (D), et al.
Amended: 9/7/23
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 5-0, 4/12/23
AYES: Cortese, Wilk, Durazo, Laird, Smallwood-Cuevas

SENATE APPROPRIATIONS COMMITTEE: 5-1, 5/18/23
AYES: Portantino, Ashby, Bradford, Wahab, Wiener
NOES: Seyarto
NO VOTE RECORDED: Jones

SENATE FLOOR: 35-0, 5/22/23
AYES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear,
Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez,
Hurtado, Laird, Limón, McGuire, Menjivar, Min, Newman, Ochoa Bogh,
Padilla, Portantino, Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg,
Wahab, Wiener, Wilk
NO VOTE RECORDED: Grove, Jones, Nguyen, Niello, Seyarto

ASSEMBLY FLOOR: 79-0, 9/11/23 - See last page for vote

SUBJECT: Workers' compensation: post-traumatic stress disorder

SOURCE: California Chapter National Emergency Number Association
California Professional Firefighters
California Statewide Law Enforcement Association
Peace Officers Research Association of California

DIGEST: This bill extends, to January 1, 2029, the presumption for specified public safety personnel that a diagnosis of post-traumatic stress injury (PTSI) is occupational, and therefore covered by workers' compensation (WC) and requires

the Commission on Health and Safety and Workers' Compensation (Commission) to submit two reports to the legislature regarding PTSI, as specified.

Assembly Amendments 1) extend the sunset to January 1, 2029, instead of 2032; 2) delete the proposed expanded presumption for specified employees of the Department of State Hospitals, Department of Developmental Services, Military Department, and Department of Veterans Affairs, additional peace officers, public safety dispatchers, public safety telecommunicators, and emergency response communication employees; and 5) require the Commission to submit reports to the legislature analyzing the effectiveness of the PTSI presumption and WC claims filed for PTSI by public safety dispatchers.

ANALYSIS:

Existing law:

- 1) Establishes a WC system that provides benefits to an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations to self-insure or by securing insurance against liability from an insurance company authorized by the state.
- 2) Creates a series of presumptions of an occupational injury for specified peace and safety officers for the purposes of the WC system, which include heart disease, hernias, pneumonia, cancer, meningitis, tuberculosis, and bio-chemical illness. The compensation awarded for these injuries must include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by workers' compensation law. Peace officers whose principal duties are clerical, such as stenographers, telephone operators, and other office workers are excluded.
- 3) Provides that a psychiatric injury can be considered compensable within the WC system if:
 - a) The mental disorder causes disability or need for medical treatment, and it is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

- b) The employee can demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.
 - c) In the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury. “Substantial cause” is defined as 35-40 percent of the causation from all sources combined.
 - d) The employee worked for the employer for at least a total of six months unless the employee’s psychiatric injury is caused by a sudden and extraordinary employment condition.
- 4) Creates, until January 1, 2025, a rebuttable presumption that a mental health condition or mental disability that results in a diagnosis of post-traumatic stress or mental health disorder is an occupational injury for the following public employees who are primarily engaged in active law enforcement activities:
- a) Active firefighting members, whether volunteers, partly paid, or fully paid, of a local government, University of California, California State University, or the Department of Forestry and Fire Protection.
 - b) Active firefighting members of a fire department that serves a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters.
 - c) Active firefighting members of a fire department that serves a National Aeronautics and Space Administration installation.
 - d) Sheriffs, undersheriffs, deputy sheriffs, police chiefs, police officers, and municipal law enforcement inspectors.
 - e) Attorney General and special agents and investigators of the Department of Justice.
 - f) Members of the California Highway Patrol, University of California Police Department, and California State University Police Department.
 - g) Arson investigators.
 - h) Parole officers and correctional officers.
 - i) Fire and rescue services coordinators who work for the Office of Emergency Services.

This bill:

- 1) Extends the sunset to January 1, 2029, for the presumption that a diagnosis of PTSI is occupational and therefore covered by WC.
- 2) Requires the Commission to submit a report to the legislature analyzing the effectiveness of the presumption and review data from PTSI injuries for which compensation is claimed from January 1, 2020, through December 31, 2025, and provided to the Legislature, the Senate Committee on Labor, Public Employment and Retirement, and the Assembly Committee on Insurance by January 1, 2027.
- 3) Requires the Commission to submit a report to the Legislature analyzing claims filed for PTSI for which compensation is claimed by public safety dispatchers, public safety telecommunicators, and emergency response communication employees, from January 1, 2020, through December 31, 2023. The study shall review data, including, but not limited to, the total number of claims, frequency of claim acceptance, frequency of claim denial, the initial claim determination, and the average time between the filing of a claim and the final determination of compensability. The report shall be provided to the Legislature, the Senate Committee on Labor, Public Employment and Retirement, and the Assembly Committee on Insurance no later than January 1, 2025.
- 4) Specifies the reports in 2) and 3) shall be submitted in compliance with Government Code Section 9795, which, among other report content obligations, requires a printed copy submitted to the Secretary of the Senate, an electronic copy to the Chief Clerk of the Assembly, and an electronic or printed copy to Legislative Counsel.

Background

The Legislature has created certain presumptions within the WC system, which shift the burden of proof in an injury claim from the employee to the employer. If an injury is covered by a presumption, the employer carries a larger burden to prove the injury is unrelated to work. With certain occupations, such as firefighters and peace officers, where employees can be exposed to more types of injury than in other occupations, the law provides presumptions for injury and illness more likely to be caused by work-related exposure.

The Commission, in its 2021 annual report, stated “Recent research has indicated that [WC] claims filed by firefighters and peace officers are more likely to involve [PTSI] than the average worker in California, and mental health stigma and fear of professional consequences were identified as a major barrier to care-seeking for first responders.” The commission subsequently recommended the following:

- Continued evaluation and monitoring of the impact of the temporary presumptions related to COVID-19.
- Continued study of the impact of extending presumptions for conditions such as [PTSI] for public safety employees and cancer for non-public safety officers.
- Consider the findings of the CHSWC study by RAND, “Posttraumatic Stress in California’s Workers’ Compensation System-A Study of Mental Health Presumptions for Firefighters and Peace Officers Under Senate Bill 542”, which in part supports rationale for [PTSI] presumption.

Comments

Purpose of this bill. According to the author, “California’s public emergency responders are uniquely exposed to emotional and mental impacts associated with the life-threatening and catastrophic events they experience while on duty, making their careers some of the most stressful occupations in the country. SB 542 (Stern, Chapter 390, Statutes of 2019) established a rebuttable presumption for [PTSI] within the workers’ compensation system for certain classes of public safety workers, including firefighters and law enforcement officers. This presumption is due to sunset on January 1, 2025, meaning the sunset must be extended to ensure that the public safety officers currently covered by the presumption maintain access into the future.

“In addition, while it is well documented that firefighters and law enforcement personnel work in jobs with severely heightened levels of stress and regularly exposed to traumatic experiences, they are not the only members of the public safety workforce to do so. Others who work behind the scenes to take the 911 calls are also confronted with horrific events such as shootings, fires, deadly accidents, and other serious, traumatic experiences. Public safety dispatchers are tasked with calming frightened or injured individuals so that they can obtain necessary information, and frequently remain on the line to speak with those individuals while emergency services are on the way. Dispatchers experience many of the same traumas as the firefighters and law enforcement officers that they assist, but they do not enjoy the same protections against those hazards.”

Related/Prior Legislation

AB 597 (Rodriguez, 2023), for injuries occurring on or after January 1, 2024, creates a rebuttable presumption for emergency medical technicians and paramedics that PTSI is an occupational injury and covered under workers' compensation. The bill is in the Assembly Committee on Insurance.

SB 284 (Stern, 2022) would have expanded the existing PTSI rebuttable presumption to the same classes of public first responders as this bill. SB 284 did not include a sunset extension. The bill was vetoed by Governor Newsom.

SB 542 (Stern, Chapter 390, Statutes of 2019) created the rebuttable presumption for specified peace officers that a diagnosis of PTSI is occupational and therefore covered by workers' compensation.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Committee on Appropriations:

- 1) Costs of an unknown amount to the Workers' Compensation Appeals Board (WCAB), as data suggests that a PTSD presumption has not led to less litigation (special fund). Although the Division of Workers' Compensation (DWC) has estimated absorbable costs for prior legislation establishing a presumption, DWC must reconsider such costs after reviewing data to quantify how much additional time and resources are needed for WCAB adjudication of such matters.
- 2) Costs of an unknown amount across impacted departments for additional workers' compensation claims and staff workload to process the increase (General Fund (GF)). The magnitude of costs depends on the number of affected employees and frequency of claims that become compensable as a result of the presumption's extension.

The Department of Finance's (DOF's) analysis notes that an increase of 10 approved claims per year, assuming costs of approximately \$50,000 per claim, would result in GF costs of at least \$500,000, paid out over the course of several years. DOF also estimates costs to local governments, but notes such costs would most likely not be state-reimbursable. The Commission on State Mandates has previously held that workers' compensation benefits impact both public and private employers and are therefore not reimbursable.

- 3) Costs of an unknown amount to the Commission on Health and Safety and Workers' Compensation to submit the two specified reports to the Legislature.

SUPPORT: (Verified 9/11/23)

California Chapter National Emergency Number Association (co-source)
California Professional Firefighters (co-source)
California Statewide Law Enforcement Association (co-source)
Peace Officers Research Association of California (co-source)
California Correctional Peace Officers Association
California Correctional Peace Officers Association Benefit Trust
California Labor Federation, AFL-CIO

OPPOSITION: (Verified 9/11/23)

American Property Casualty Insurance Association
California Association of Joint Powers Authorities (CAJPA)
California Coalition on Workers Compensation
California Joint Powers Insurance Authority
California Schools Joint Powers Authority
California Special Districts Association
California State Association of Counties (CSAC)
County of Monterey
Exclusive Risk Management Authority of California
Golden State Risk Management Authority
League of California Cities
Northern California Cities Self Insurance Fund
Northern California Special Districts Insurance Authority
Ontario; City of
Public Risk Innovation, Solutions, and Management (PRISM)
Redwood Empire Schools Insurance Group
Rural County Representatives of California (RCRC)
Self Insurance Risk Management Authority
Small Cities Organized Risk Effort
The Public Entity Risk Management Authority
West San Gabriel Workers Compensation JPA

ARGUMENTS IN SUPPORT: The California Professional Firefighters state:

Firefighting and law enforcement have been determined to be two of the most stressful occupations, with post-traumatic stress impacting a disproportionately high number of public safety officers due to the

nature of their work. Repeated and chronic exposure to traumatic events and critical incidents increases the risk for post-traumatic stress and other stress-induced symptoms.

Firefighters and law enforcement officers regularly respond to structure fires, massive wildfires, stabbings, gun battles and shootings, domestic violence incidents, terrorist acts, automobile accidents, airplane crashes and earthquakes, just to name a few. Today, a firefighter's or law enforcement officer's occupational stress is heightened in the face of California's "new normal" – an increase in active shooter events, as well as wildland and wildland-urban interface fires, which continue to annually increase as hot, dry, and wind-whipped conditions persist.

However, while it is well documented that firefighters and law enforcement personnel work in jobs with severely heightened levels of stress and are regularly exposed to traumatic experiences, they are not the only members of the public safety workforce to do so. Public safety dispatchers are on the receiving end of a call for help. They are tasked with calming frightened or injured individuals so that they can obtain necessary information, and frequently remain on the line to speak with those individuals while emergency services are on the way... By extending the sunset... this bill will allow time for further analysis of the benefit and effectiveness of the law and certainly demonstrate the value of the PTSI presumption to the men and women of the fire service.

ARGUMENTS IN OPPOSITION: The California Association of Joint Powers Authorities, California Coalition on Workers' Compensation, and Public Risk Innovation, Solutions, and Management state "California's workers' compensation system treats psychiatric injuries somewhat differently than physical injuries or illnesses, and that is because the rules acknowledge that psychiatric injury tends to be far more complex in terms of causation. While work can be a stressor in the life of an employee, far more of our lives are lived outside of the workplace and psychiatric injuries are subjective in terms of causation. Because of this, California law requires that "the actual events of employment" be the predominant cause (51%) of psychiatric injury. If the psychiatric injury is the result of violence or a violent event in the workplace, then the threshold is lower (35-40%). California law also protects employers from claims of psychiatric injury if a good faith, nondiscriminatory personnel action (bad review, termination, etc.) was largely responsible for the psychiatric injury. Psychiatric injuries have been repeatedly

used as a center of fraud and abuse in California's workers' compensation system, and the protections in existing law are there for a reason. Undermining those protections with a presumption without any evidence of a problem only serves to open the door to abuse and fraud."

ASSEMBLY FLOOR: 79-0, 9/11/23

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Megan Dahle, Davies, Essayli, Flora, Mike Fong, Vince Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Rendon, Reyes, Luz Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas

NO VOTE RECORDED: Dixon

Prepared by: Dawn Clover / L., P.E. & R. / (916) 651-1556
9/11/23 19:54:58

**** END ****