

LAW WEEK

COLORADO

Finding Middle Ground

Latest workers' comp bill defines coverage for first responders diagnosed with PTSD

BY SARAH GREEN
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A bill that will allow first responders who are exposed to repeated violence, death and trauma to file for workers' compensation is one step closer to becoming law.

House Bill 1229, Workers' Compensation for Mental Impairment, passed its third reading in the Colorado Senate April 19 with a vote of 28-6, with no amendments. Once signed by Gov. John Hickenlooper, first responders will be able to file workers' compensation claims, allowing them to be diagnosed and receive treatment for post-traumatic stress disorder due to on-the-job exposure.

"When I learned that our first responders were not able to file a claim and receive treatment for PTSD I was immediately in support of sponsoring (the bill)," said Democratic Sen. Nancy Todd, who co-sponsors the bill with Reps. Jonathan Singer, a Democrat, Rep. Jon Becker, a Republican and Sen. John Cooke, a Republican and retired police sheriff.

Considering that an estimated 10 percent of law enforcement officers suffer from PTSD, the bill will have a significant impact on first responders, said Burg Simpson shareholder and workers' compensation attorney Nick Fogel, encouraging both supporters and non-supporters of the bill to listen to the testimony given by first responders in the committee hearings to fully understand the scope of this issue and the difficulties that our first responders face.

"First, it will give first responders access to much needed medical treatment to address their PTSD," he said. "Second, the bill will hopefully boost morale among first responders who sacrifice so much for our communities only to have the door slammed in their face when they seek much needed PTSD treatment."

FINDING A HAPPY MEDIUM

Over the past three years, legislatures have tried to pass a handful of bills to allow first responders to file workers' compensation claims for mental impairment, but the bills failed because insurers and small business owners argued that the bills were either too broadly written and would cause abuse in the private sector, or the bills focused too heavily on individual job titles such as police officers and EMTs.

Although this year's bill was written in cooperation with police unions, legislators and Pinnacol Insurance — Colorado's primary workers' compensation

insurer — it's been a long road to get a bill passed that focuses on the cause of mental impairment and not which type of workers should be covered.

In fact, Pinnacol opposed two previously proposed bills: House Bill 1343, which was proposed in 2014 and House Bill 1399, which was proposed last year.

"The second bill would have basically allowed anyone under any circumstance in any profession to file a claim for PTSD, and we thought that was really overreaching because it went far beyond the first responder community," said Pinnacol vice president of communications and public affairs Edie Sonn.

The 2017 bill's sponsors, police unions and insurance companies have found a happy medium, though. By adding the definitions "psychologically traumatic event" and "serious bodily injury" to the workers' compensation statutes, the bill language specifically applies to the work of first responders, including the work of police officers, fire fighters, EMTs, emergency room medical personnel and correctional officers.

Further, the bill gives employers and carriers the ability to deny claims or treatment consistent with the law, Fogel said. But either way, he added, "We owe it to our first responders to allow them to seek treatment for PTSD that is a consequence of their job."

Unlike previous versions of the bill, House Bill 1229 "does not open the flood gates to inappropriate claims from folks in the broad business community," Sonn said and that it's a narrow exception to the existing statutory language that says one can only file a mental impairment claim for something that occurs outside of work.

OUTSIDE USUAL EXPERIENCES

Under the state's current workers' comprehension statute, a psychologically traumatic event does qualify a first responder to file a claim, but it must "be generally outside of a worker's usual experience."

Psychologically traumatic events aren't covered because "very few traumatic events are not considered to be outside the usual experience of first responders," said Todd.

"(I) realize that our first responders



House Bill 1229 will allow first responders to file workers' compensation claims to receive treatment for PTSD. / LAW WEEK FILE

have a greater opportunity of being in high risk positions," she said. "However, the repetition of traumatic events can increase the impact on an individual's possibility of developing PTSD," Todd said, noting that she supports the bill because she encourages fair treatment for all medical conditions — despite the nature of the job.

Based on this verbiage, first responders are being told that every traumatic event they encounter falls within their "usual experience" resulting in the denial of claims, Fogel added.

"The interpretation is that as an officer you are supposed to encounter horrific incidents as a consequence of your job, and that should result in disqualification from workers' compensation benefits," he said.

"In my experience this position is being utilized by employers and insurance carriers to deny PTSD claims no matter the triggering exposure," he said. "I have had cases where all the doctors agree that an officer has PTSD and it is caused by their work-related exposure, but the insurance carrier still denies the claim based on the current statutory language."

The new bill specifies that "a psychologically traumatic event includes an event that is within a worker's usual experience only when the worker is diagnosed with PTSD by a licensed psychiatrist or psychologist after the worker experienced exposure to an event" such as visually witnessing a death.

WITH SOME OPPOSITION

The latest bill's drafters did get some push back, though. Those within the self-insured municipalities and some fire districts expressed concern that the bill will increase claims frequency, premium costs and insurance rates, Sonn said, but these workers' compensation claims are "not going to break anybody's bank."

"These are not high dollar claims to cover because there are statutory limits on how long the benefits can last in many of these cases," Sonn said. "We get, on average about a hundred or so claims a year and on average we only pay out about \$1000 on each one of those claims, so we don't anticipate it will have a significant impact on employers whatsoever."

However, Sonn mentioned that although the bill did receive some push-back, many self-insured municipalities and first responders "completely support the bill."

"At the end of the day, we don't want somebody in (one of) our riskiest, highest-stressed jobs who is not able to cope with that risk. The vast majority of police officers and EMTs and ER doctors are able to deal with what they see (every day)," she said. "But some (are) exposed to some ultra-traumatic stuff ... and they ought to be able to file the claim, get the care they need and get back to work." •

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"The bill will have a major impact on the health and wellbeing of our first responders which in turn will have a positive impact on the communities in which they serve." —Nick Fogel, workers' compensation attorney