PRIMA'S 2018 RISK MANAGEMENT
WEBINAR SERIES

Post-Traumatic Stress Disorder Legislation

Achieving Balance Between Issue and Solution

How Big is the Issue?

First, let's understand the moving parts

First responders contend the current workers' compensation system is inadequate in providing timely and valuable benefits for occupational illnesses.

- First responders seeking relief include police, employed and volunteer firefighters, emergency medical technicians but the breadth of occupations covered continues to expand

- In recent legislative versions, occupational illnesses include respiratory, cardiac, cancer, mental/nervous, PTSD conditions

And identify the stakeholders involved in the discussion:

- Cities, counties, states
- First responder associations and unions
- Politicians
- Veterans' Administration
- Workers' comp pool managers
- Supporting lobbyists
- Support groups
- Lawyers, lawyers and more lawyers

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PTSD National Statistics*

- 70% of adults in the U.S. have experienced some type of traumatic event at least once in their lives. This equates to approximately 223.4 million people
- Up to 20% of these people go on to develop PTSD. As of today, that equates to approximately 44.7 million people who were or are struggling with PTSD.
- An estimated 8% of Americans − 24.4 million people − have PTSD at any given time. That is equal to the total population of Texas.
- An estimated one out of every nine women develops PTSD, making them about twice as likely as men. In the past year alone the number of diagnosed cases in the military jumped 50% and that's only the reported and diagnosed cases.
- The annual cost to society of anxiety disorders is estimated to be significantly over $42.3 billion, often due to misdiagnosis and under-treatment. This includes psychiatric and non-psychiatric medical treatment costs, indirect workplace costs, mortality costs, and prescription drug costs
- According to the VA, experts estimate that up to 20 % of Operation Enduring Freedom and Operation Iraqi Freedom veterans, up to 10 % of Gulf War veterans, and up to 30 % of Vietnam War veterans have experienced PTSD. Consequently, demand for PTSD treatment continues to grow.

***Source: PTSDUnited.org**

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Consider the Scope of PTSD Legislation in 2017

States passing PTSD specific legislation for first responders

- **Colorado** – Two bills: First recognizes PTSD as compensable under workers' compensation and second allows for treatment of PTSD with medical marijuana
- **South Carolina** – Created a $500,000 fund to help fund first responders' out of pocket medical costs related to treatment of PTSD
- **Texas** – Act eases evidentiary burden for first responders filing PTSD claims: "pre-ponderance of evidence" and without the need to declare mental impairment
- **New York** – Included PTSD references in 2018 budget allowing first responder claims for mental injury based on extraordinary work-related stress
- **Vermont** – Created a true occupational presumption for PTSD
- **Maine** – Created a true occupational presumption for PTSD

States that considered PTSD legislation but did not pass

- **Florida**
- **Connecticut**
- **Minnesota**
- **New Mexico**
- **Ohio**
- **Tennessee**

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Consider the Scope of PTSD Legislation in 2018

States considering PTSD presumption legislation for first responders

- **New Hampshire** – Language nearly identical to VT and ME with loosening of qualified professional able to diagnosis PTSD
- **Washington** – Legislation sought to extend presumption for up to five years following cessation of service – enacted into law in 2018
- **Arizona** – Tied creation of PTSD presumption with required treatment schedule and continuation of benefits and salary while receiving therapy
- **Minnesota** – Broad expansion of covered occupations including forestry, conservation and correctional employees – enacted into law in May 2018.

State that loosened evidentiary bar to filing PTSD claims in the workers' compensation system

- **Florida –** A relatively conservative model that allows first responders to file occupational claims without demonstrating a physical injury. Interpretation and application of law proving difficult.

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Forces Driving PTSD Presumption

Emerging trends

- 34% of first responders have been diagnosed with clinical depression or PTSD
- Best guess – at least 20% to 37% of first responders likely to be diagnosed with PTSD
- 24 states now permit the use of medical marijuana to treat first responder PTSD

Much of it flows from the debt of 9/11 and its aftermath

- First responders have earned unquestionable protection of health under the law
- A generation of veterans now fill the ranks of first responders

And in some ways, the role of workers' compensation has changed

- Very easy means of assuaging a community's need to help
- Likely increase in cost to community led by the desire to "do the right thing"
- Lack of persuasive scientific evidence is irrelevant – sentiment over science

Still plagued by uncertainty, sources weigh the fiscal cost of PTSD differently

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What does the Future Hold for PTSD Legislation and Presumption?

First Responders will lobby to improve/broaden existing workers' compensation laws

- Fewer limitations regarding eligibility

  - ✓ Lobby efforts to legislate closer to the Oregon, Vermont, Maine models
  - ✓ Easier burden of proof for first responders
  - ✓ More mental/mental legislation
  - ✓ PTSD specifically defined as a mental/nervous condition for workers' compensation

- Broadening volunteer first responder coverage

Public entities and insurance markets will develop alternative approaches to fit legislative requirements

- PTSD suite of insurance products
- Improvements in behavioral health tele-medicine and on-site clinics
- More effective employee assistance programs – taken from examples in the private sector
- Taxpayer-paid and voluntary products
- Better communication strategies

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Appendix

Legislative Examples

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Basic Components to PTSD Legislation

1. *Preamble/Legislative Intent*
2. *Eligibility/Definitions*
3. *Definition of Traumatic Event*
4. *Diagnosis*
5. *Party with Authority to Diagnose*
6. *Basis of Rebuttal*
7. *Continuation/Extension*
8. *Reporting Requirements*
9. *Fiscal Impact*
10. *Other Considerations – Attaching salary/benefits continuation or creation of benefits program*

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2017 PTSD Legislation Examples – Vermont HB 197

Legislative Intent

- Establishes a rebuttable presumption for first responders diagnosed with PTSD or presuming PTSD was incurred during service in the line of duty; and included mental conditions under the definition of "***occupational disease***"
- Diagnosis must be made within three years of last active date of employment

Definition of Traumatic Event

- Stressful event compared to the ***"average employee across all occupations…"***

Definition of Mental Health Professional

- Very broad description of mental health professional and includes clinical social worker, mental health counselor and alcohol or drug abuse counselor

Basis to Rebut

- Must be shown by a preponderance of the evidence that the PTSD was ***"caused by nonservice-connected risk factors or exposure"***

Fiscal Impact

- NCCI estimated HB 197 would potentially ***"result in a significant impact on systems costs for police, fire, rescue or ambulance worker classification"***

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2017 PTSD Legislation Examples – Maine LD 848

Legislative Intent:

- Created a PTSD presumption for active first responders and ***corrections officers***

Definition of Traumatic Event:

- Clear and convincing evidence that the work-related stress that is "***extraordinary and unusual in comparison to pressures and tensions experienced by the average employee across all occupations"***

Definition of Mental Health Professional

- Allopathic or osteopathic physician with specialization in psychiatry or psychology

Basis to Rebut

- May rebut by "***clear and convincing evidence to the contrary…."***
- In other words, question whether work stress was extraordinary and unusual

Fiscal Impact:

- Estimated to increase statewide municipal expenses by as much as $2.5 million annually

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2018 PTSD Legislation Examples – New Hampshire SB 553

Legislative Intent:

- Creates a PTSD presumption for active first responders with coverage extending to diagnoses made up to 3 years following cessation of service

Definition of Traumatic Event:

- Work-related stress that is "extraordinary and unusual in comparison to pressures and tensions experienced by the ***average employee across all occupations"***

Definition of Mental Health Professional

- Like Vermont HB 197, SB 553 expands the definition to include "clinical social worker, mental health counselor, or alcohol or drug abuse counselor"
- Requires ***"demonstrated competence in the treatment and diagnosis of mental conditions***"

Basis to Rebut

- May rebut by "***preponderance of the evidence that the post-traumatic stress disorder was caused by non-service-connected risk factors or non-service connected exposure"***

Fiscal Impact:

- Legislative summary uses phrase "***fiscal impact is indeterminable***" three times

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2017 PTSD Legislation Examples – Tennessee SB 211

Legislative Intent:

- In preamble, legislation states that ***"there is a national epidemic of … PTSD"***
- Sought to create counseling program with ***"not less than 10 visits with a licensed professional counselor for the purpose of treating PTSD"***

Definition of Traumatic Event:

- Not defined but references in preamble that ***"the trauma experienced by a public safety employee has a cumulative effect … affecting"*** the first responder

Definition of Mental Health Professional

- ***"person licensed as a professional counselor designated as a mental health service provider…"***
- Defines trauma therapy in four specific areas including ***eye-movement desensitization reprocessing***

Basis to Rebut

- Makes clear the counseling program is not in the workers' compensation system

Fiscal Impact:

- None stated

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2018 PTSD Legislation Examples – Washington State HB 1655

Legislative Intent:

- Creates a PTSD presumption for active first responders who are members of police and fire retirement system or are covered for other occupational illnesses.
- Presumption extends beyond termination of service – 3 months for every year served to a maximum of 5 years.

Definition of Traumatic Event:

- From Rules adopted by WA Department of Labor and Industries: Stress resulting from ***experiencing or witnessing a single traumatic event such as threatened death, assault, or life-threating injury may constitute an industrial injury.***

Definition of Mental Health Professional

- Not defined

Basis to Rebut

- May rebut by "***preponderance of the evidence"*** that the post-traumatic stress disorder was caused by … ***exposure to other employment and non-employment activities***.

Fiscal Impact:

- None provided

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2018 PTSD Legislation Examples – Arizona HB 2501

Legislative Intent:

- Creates a PTSD presumption for first responders
- Adds 36 counseling sessions to the current 12
- The employer must continue same pay and benefits for an employee diagnosed with PTSD and is not fit for duty

Definition of Traumatic Event:

- Must have received or currently receiving PTSD treatment
- Licensed mental health professional determines that the cause is occupational
- Lists 5 stressful situations

Definition of Mental Health Professional

- Very broad - licensed mental health professional

Basis to Rebut

- May rebut by "***preponderance of the evidence that there is a specific cause of the post-traumatic stress disorder other than service connected exposure"***

Fiscal Impact:

- Significant range of estimated cost ranging from $8 million to $90 million

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2018 PTSD Legislation Examples – Minnesota HF 3873

Legislative Intent:

- Creates a PTSD presumption for first responders but expands broadly to forest officer, state correctional officer, state crime bureau employees and others

Definition of Traumatic Event:

- Limited to one single event and not cumulative
- Licensed psychiatrist or psychologist
- Does not list stressful situations

Definition of Mental Health Professional

- Limited to licensed psychiatrist or psychologist
- References DSM

Basis to Rebut

- Cannot be diagnosed prior to employment
- May rebut by demonstrating the condition arose from disciplinary action, work evaluation, etc.
- No evidentiary standard listed

Fiscal Impact:

- Significant range of estimated cost ranging from $27 million to $52 million annually

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2018 PTSD Legislation Examples – Florida SB 376

Legislative Intent:

- Allows for award of workers' compensation for PTSD without presence of physical injury
- Does not create a true presumption for first responders but eases evidentiary burden to prove PTSD within the workers' compensation system
- ***52 week window to file following traumatic event***

Definition of Mental Health Professional

- Strict definition requiring diagnosis by a ***licensed psychiatrist who is an authorized treating physician with a diagnosis as described in the DSM, 5th Edition***

Evidentiary Requirement

- First responder must demonstrate diagnosis supported by ***"clear and convincing"*** medical evidence
- Bill lists ***11 qualifying stressful events*** first responder must have experienced to support claim

Basis to Rebut

- Not specifically stated
- Two possible options to rebut: a. stressful event determined not traumatic and/or b. non-occupational cause of PTSD such as military service

Fiscal Impact:

- Unknown – no guidance in the legislation

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