



2018 Legislative Issue Briefs



First Responder Workers' Compensation

Priority Statement:

The Florida League of Cities OPPOSES legislation that creates a significant fiscal impact on taxpayer-funded workers' compensation costs for first responders by increasing benefits for mental injuries.

Position Summary:

Under current law, first responders suffering from Post-Traumatic Stress Disorder (PTSD) may receive medical benefits and care under workers' compensation. However, these benefits do not include wage, or what is referred to as indemnity, benefits that provide payment for time lost from work. Under bills being considered during the 2018 legislative session, workers' compensation benefits would be expanded to include wage benefits for first responders suffering from PTSD. The Florida League of Cities is concerned with broadening workers' compensation benefits to include wage benefits for PTSD due to the unknown, but likely significant, fiscal impact.

Background:

An employee who suffers an accidental compensable injury or death arising out of activities performed in the course and the scope of the employment is entitled to compensation and benefits under Chapter 440, Florida Statute (workers' compensation). Generally, employers may secure coverage for workers' compensation claims from an authorized carrier, qualify as a self-insurer or purchase coverage from a specified insurer of last resort.

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries. An accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.

Section 440.093, Florida Statute, sets forth the general conditions under which a mental or nervous injury is compensable. Typically, a mental or nervous injury due to stress, fright or excitement is not an injury by accident arising out of the employment. Mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a physical injury resulting from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable.

In 2007, the Legislature enacted significant changes in workers' compensation benefits for first responders. The law provides for the payment of medical benefits in employment-related cases for first responders that involve a mental or nervous injury or PTSD without an accompanying physical injury requiring medical treatment. The law does not provide for the payment of lost wage benefits, meaning the first responder can obtain medical care but must continue to work to receive wages.

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Thus, wage benefits for first responder PTSD claims are not available unless there is an accompanying physical injury.

In 2015, the Ohio Bureau of Workers' Compensation studied legislation that would have made peace (law enforcement) officers, firefighters and emergency medical workers diagnosed with PTSD arising from employment, without an accompanying physical injury, eligible for compensation and benefits under Ohio's Workers' Compensation Law. Basing the analysis on the fact that the national average of first responder PTSD is 18 percent, the study estimated it would cost public employers in Ohio \$182 million a year to make first responders eligible for workers' compensation benefits arising from work-related PTSD without an accompanying physical injury. The study further estimated that because a majority of first responders are covered by public employers, this change would have approximately doubled the amount that Ohio public employers pay in premium.¹

Because cities and counties in Florida employ almost all first responders, cities and counties will incur almost all the estimated fiscal impact of legislation seeking to increase workers' compensation benefits for first responders. The Florida League of Cities advocates maintaining a uniform and comprehensive workers' compensation system for all employees, regardless of the particular job of an employee. Police officers and firefighters already enjoy significant protections under workers' compensation laws that are not available to other employees.

Status:

CS/HB 227 (Willhite) and **CS/SB 376** (Book) provide that a mental or nervous injury suffered by a law enforcement officer, firefighter, emergency medical technician or paramedic is compensable under the workers' compensation law for lost wages, if the mental or nervous injury was shown to meet the criteria for PTSD as determined by a psychiatrist.

CS/CS/HB 227 was amended in the House Government Operations & Technology Appropriations Subcommittee to require the mental or nervous injury resulted from the first responder acting within the course of his or her employment and seeing a deceased minor, directly witnessing the death of a minor, directly witnessing an injury to a minor who subsequently died prior to or upon arrival at a hospital, participating in the physical treatment or manually transporting an injured minor who subsequently died prior to or upon arrival at a hospital emergency department, seeing a decedent whose death involved grievous bodily harm of a nature that shocks the conscience, directly witnessing a death, including suicide, involving bodily injury by grievous bodily harm of a nature that shocks the conscience, or treating or, manually transporting a person who subsequently died prior to or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience, including an attempted suicide by means that creates such harm.

The amended version of CS/CS/HB 227 maintains a clear and convincing evidentiary standard. The bill was amended to require a first responder to receive a diagnosis of PTSD within 30 days of the qualifying event or 30 days from the manifestation of the disorder, whichever is later, but cannot be more than a year after the qualifying event. Finally, CS/CS/HB 227 requires an employing agency of a first responder to provide educational training related to mental health awareness, prevention, mitigation and treatment.

¹ http://www.ohiomfg.com/wp-content/uploads/11-13-15_lb_wc_BWC.actuarial.pdf

As amended, **CS/SB 376** lowers the evidentiary standard for showing compensability from clear and convincing evidence to a preponderance of evidence. The clear and convincing evidence standard requires that the evidence be substantially more likely to be true whereas the preponderance of evidence standard requires that the evidence be mostly true (above 50 percent). This has the potential to significantly impact cities because it is a less stringent standard of proof. Additionally, CS/SB 376 eliminates the requirement that an employee must initiate mental health treatment within 15 days after the incident. Finally, CS/SB 376 expands the instances that qualify for compensability by allowing a first responder to arrive at the **scene** of a murder, suicide, fatal injury, mass casualty event or child death, rather than witnessing the fatality.

Revised: 02/15/2018