



2018 Legislative Issue Briefs



First Responder Workers' Compensation

Priority Statement:

The Florida League of Cities is monitoring 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 worked with the Senate and House bill sponsors to narrow the scope of the bills and now the League no longer opposes the legislation.

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:

The League commends our first responders for the sacrifices they make in the line of duty. At times, a first responder acting within the course of his or her employment may experience a horrific event that is responsible for a mental or nervous injury, including post-traumatic stress disorder (PTSD). 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. Currently, first responders suffering from PTSD may only receive medical benefits under workers' compensation but not wage/indemnity benefits.

CS/CS/CS/HB 227 (Willhite) and **CS/CS/SB 376** (Book) passed all their committees of reference and are awaiting final passage on the House and Senate floors. The bills detail specific traumatic events that would qualify a first responder to be compensable under the workers' compensation law for lost wages, if a mental or nervous injury was shown to meet the criteria for PTSD as determined by a psychiatrist. The legislation requires a clear and convincing evidentiary standard be met by the first responder. The bills 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, the legislation requires an employing agency of a first responder to provide educational training related to mental health awareness, prevention, mitigation and treatment.

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