

Date of Hearing: April 12, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 1145 (Maienschein) – As Introduced February 16, 2023

SUBJECT: Workers' compensation

SUMMARY: Extends an industrial injury rebuttable presumption for a diagnosis of a post-traumatic stress disorder (PTSD) to certain state nurses, psychiatric technicians, and various medical social services specialists. Specifically, **this bill:**

- 1) Extends a PTSD presumption to employees at the Department of Corrections and Rehabilitation, the State Department of Developmental Services, and the State Department of State Hospitals covered in State Bargaining Units 17, 18, and 20.
- 2) Provides that the compensation that is awarded shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided.
- 3) Extends the presumption following termination of service for a period of three months for each full year of service, not to exceed 60 months, commencing on the last date actually worked in the specified capacity. The covered employee must have been on the job for at least six months for the presumption to apply.
- 4) Provides that the bill's provisions shall be applied to claims filed on or after January 1, 2024, regardless of whether the claim was denied or is on appeal.
- 5) Provides that these provisions shall only remain in effect until January 1, 2030.

EXISTING LAW:

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (California Constitution Article XIV, Section 4)
- 2) Creates a series of rebuttable presumptions of an occupational injury for peace and safety officers for the purposes of the workers' compensation system. These presumptions include:
 - Heart disease
 - Hernias
 - Pneumonia
 - Cancer
 - Meningitis
 - Tuberculosis
 - 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. These presumptions tend to run for 5 to 10 years commencing on their last day of employment, depending on the injury and the peace officer classification involved. Peace officers whose principal duties are clerical, such as stenographers, telephone operators, and other office workers are excluded. (Labor Code Sections 3212 to 3213.2)

- 3) Provides, until January 1, 2025, a rebuttable presumption that a diagnosis of PTSD for specified peace officers and firefighters is an occupational injury, running for up to 5 years. The benefit includes full hospital, surgical, medical treatment, disability indemnity, and death benefits, but only applies to peace officers who have served at least 6 months. (Labor Code Section 3212.15)
- 4) Provides that the presumptions listed above are rebuttable and may be controverted by evidence. However, unless controverted, the Workers' Compensation Appeals Board must find in accordance with the presumption. (Labor Code Sections 3212 to 3213.2)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) *Purpose.* According to the author:

AB 1145 would establish a rebuttable presumption that post-traumatic stress disorder (PTSD) suffered by nursing staff who provide direct care to prison inmates and state hospital patients is a workplace injury. These state nurses, psychiatric technicians, social service specialists and various medical specialists provide direct care to inmate and patient populations that have committed serious and violent felonies or have severe mental illnesses that make them a danger to themselves or others.

This nursing staff is most often the direct recipient of assaultive behavior. Each day likely involves repetitive verbal and emotional abuse, physical threats, and witnessing or being the target of horrific violent assaults. This toll on their psychological and physical health from these traumatic experiences can undoubtedly produce psychological injury, including PTSD. Unfortunately, the burden falls upon the nurse to prove their psychological injury resulted from a workplace injury.

These nurses deserve to receive the benefits of Workers' Compensation without undue burden so they can heal from psychological trauma they may endure doing their job.

- 2) *Supporting Data and Prior Studies.* Generally, in order to establish that a new presumption ought to be adopted, proponents must provide data that shows that the injury is most likely to be job-related and has a high incidence rate among the workers seeking the presumption. The data should also show that the injury is difficult to prove as being job-related. Finally, the proponents of the presumption must also show that when claims are filed, they are denied for lack of proof that the injury is job-related.

In September 2019, the Chair of the Assembly Insurance Committee requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) undertake a study related to the PTSD rebuttable presumption created by SB 542 (Stern), Chapter 390, Statutes of 2019. The results of that study were presented to the CHSWC board at their October 5, 2021 meeting. However, many of the board members raised concerns about the study not being very robust and the study's authors noted that further research would be needed to better understand the effectiveness of the PTSD presumption.¹ Subsequently, SB 284 (Stern) of 2022, which would have expanded the existing PTSD presumption to cover additional firefighters, peace officers, and public safety dispatchers and telecommunicators was vetoed by the Governor largely due to a lack of data and a sufficient study indicating the need for the presumption.

The author of this bill has provided limited data showing that nearly half the PTSD claims submitted by psychiatric technicians (State Bargaining Unit 18) employed by the Department of State Hospitals are initially rejected. However, this alone does not provide clear evidence that a new presumption is needed and this data only applies to a limited number of employees that would be covered by this bill. Specifically, this bill would apply to about 16,750 nurses, psychiatric technicians, and medical and social services specialists who work in state prisons, state veteran's homes, state developmental centers, and state hospitals. Therefore, the author of this bill has also committed to requesting a study from CHSWC to be completed at a point where the data from the presumption proposed in this bill would be more readily available, but before the provisions of this bill sunset on January 1, 2030.

- 3) *Presumptions.* Presumptions have never been intended to create work related injuries when, in fact, the injuries in question are not work related. Rather, presumptions of compensability have been adopted, some many decades ago, to reflect unique circumstances where injuries or illnesses appear to logically be work related, but it is difficult for the safety officer to prove it is work related. There has clearly been some slippage over time from a rigorous application of this rationale, but it remains the underlying premise of presuming injuries or illnesses to be work related.

With very narrow exceptions for privately employed firefighters for public facilities, presumptions of compensability have been granted only to public safety officers – fire and peace officer employees. Thus, the costs of presumptions are borne only by state and local government employers, and only for the narrow class of employee, broadly referred to as public safety employees, whose jobs regularly place them in harm's way.

- 4) *Presumptions are rebuttable.* As a matter of law, public employers have the opportunity to rebut the presumption, and establish that the injury or condition was not the result of employment. As a practical matter, however, presumptions are rarely rebutted. Opponents argue that the virtual impossibility of proving a negative renders the presumptions functionally conclusive. Data on the number of times a presumption has been rebutted suggests this argument is valid.

¹ "Posttraumatic Stress in California's Workers' Compensation System: A Study of Mental Health Presumptions for Firefighters and Peace Officers under Senate Bill 542," RAND (2021).
https://www.dir.ca.gov/chswc/Meetings/2021/RAND_mentalhealth_report.pdf

5) *Related Legislation.*

- a) SB 623 (Laird) of the current legislative session, extends, until January 1, 2032, an existing industrial injury rebuttable presumption for PTSD and expands the existing presumption to apply to additional firefighters, public safety dispatchers, public safety telecommunicators, and emergency response communication employee. SB 623 is pending before the Senate Committee on Labor, Public Employment and Retirement.
 - b) SB 284 (Stern) of 2022, expanded the existing industrial injury rebuttable presumption for PTSD to additional firefighters, public safety dispatchers, public safety telecommunicators, and emergency response communication employees. SB 284 was vetoed by the Governor.
 - c) SB 542 (Stern), Chapter 390, Statutes of 2019 created the PTSD industrial injury presumption for firefighters and peace officers.
- 6) *Arguments in Support.* The California Association of Psychiatric Technicians (CAPT), the sponsor of this bill, argues the bill is needed because without a presumption the burden falls upon the employee to prove their PTSD resulted from a workplace occurrence, which “places an undue hardship on the victim of a workplace incident simply struggling to heal.”
- 7) *Arguments in Opposition.* The California Coalition on Workers’ Compensation opposes this bill, arguing that “It is clear that AB 1145 would drive up costs for struggling public entities in a time of budget deficits, but it’s not at all clear that a presumption is needed for these workers to fairly access the workers’ compensation system.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Psychiatric Technicians
California Nurses Association
Service Employees International Union, Local 1000

Opposition

American Property Casualty Insurance Association
California Association of Joint Powers Authorities (CAJPA)
California Coalition on Workers Compensation

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