

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE

Lisa Calderon, Chair

SB 623 (Laird) – As Amended March 20, 2023

SENATE VOTE: 35-0

SUBJECT: Workers' compensation: post-traumatic stress disorder

SUMMARY: Expands an existing industrial injury rebuttable presumption for a diagnosis of a post-traumatic stress disorder (PTSD) to additional firefighters and public safety officers.

Specifically, **this bill:**

- 1) Extends, until January 1, 2032, the PTSD presumption described above to firefighters employed by the State Department of State Hospitals, the State Department of Developmental Services, the Military Department, and the Department of Veterans Affairs.
- 2) Extends, until January 1, 2032, the PTSD presumption described above to additional peace officers, as specified, employed by the Department of Justice, the State Department of State Hospitals, the State Department of Developmental Services, and the Department of Corrections and Rehabilitation.
- 3) Extends, until January 1, 2032, the PTSD presumption to public safety dispatchers, public safety telecommunicators, and emergency response communication employees.
- 4) Defines "public safety dispatcher," "public safety telecommunicator," or "emergency response communication employee" as an individual employed by a public safety agency whose primary responsibility is to receive, process, transmit, or dispatch emergency and nonemergency calls for law enforcement, fire, emergency medical and other public safety services by telephone, radio, or other communication device, and includes an individual who supervises other individuals who perform these functions.
- 5) The provisions of this bill would only apply prospectively to individuals, as specified, to injuries occurring on, or after, January 1, 2024.
- 6) Extends the sunset, until January 1, 2032, for the existing presumption that a diagnosis of PTSD for specified peace officers and firefighters is an occupational injury.

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 disputable presumptions of an occupational injury for peace and safety officers for the purposes of the workers' compensation system. These presumptions include:
 - a) Heart disease
 - b) Hernias
 - c) Pneumonia
 - d) Cancer
 - e) Meningitis
 - f) Tuberculosis
 - g) 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 disputable 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 disputable 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:

California's peace officers, firefighters, and public safety dispatchers are exposed to extraordinarily stressful working conditions on a near-daily basis. They respond to structure fires, massive wildfires, gun violence, domestic violence incidents, terrorist acts, automobile accidents, airplane crashes, and earthquakes, just to name a few.

In 2019, California enacted a rebuttable presumption within the workers' compensation system to increase treatment of post-traumatic stress injuries (PTSI) in firefighters and law enforcement. Because PTSI is presumed to have occurred during the course of their duties under the workers' compensation system, this law has promoted timely care of PTSI for our public emergency responders.

Senate Bill 623 ensures California's public emergency responders can continue accessing critical health care by extending the existing PTSI presumption by seven years from 2025 to 2032. Without further action, this critical presumption will expire. SB 623 also

expands the presumption to include 9-1-1 dispatchers and other state peace officers who experience these same traumatic events on a near-daily basis.

- 2) *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.

- 3) *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.
- 4) *Workers' compensation is not the only government-provided benefit for these employees*. The implication that these employees must be granted the benefit of a presumption, or they will be left out in the cold, is erroneous. First, the employee can always do what every other employee must do – prove the injury or illness is work related. Second, even if the employee cannot carry that burden of proof, they have health insurance and other employee benefits that assure their conditions can be treated, and sick leave to take time off to recover, and other employer-sponsored disability benefits.
- 5) *Supporting Data and the SB 542 (Stern, Chapter 390, Statutes of 2019) Study*. Generally, in order to establish that a new presumption ought to be adopted, proponents must show that the injury is most likely to be related to the job, that it is hard to prove this fact, and that when claims are filed, they are denied for lack of proof that the injury is related to the job.
 - a) 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). CHSWC commissioned RAND to undertake the study and 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 Some of the key findings of that study were:

- Firefighters and peace officers do not appear to have worse mental health or higher suicide rates than other workers exposed to trauma on the job.
 - First responders PTSD claims were more likely to be denied compared to other workers that filed PTSD claims.
 - Additional costs to state and local governments for a PTSD presumption could be large and in excess of tens of millions of dollars annually.
- b) The sponsors of this bill including the California Professional Firefighters (CPF), the California Statewide Law Enforcement Association (CSELA), the Peace Officers' Research Association of California (PORAC), and the California Chapter of the National Emergency Number Association (CALNENA) have indicated that they are in the process of collecting additional data from their members. However, at the time this analysis was written that data had not been provided to this committee.
- c) 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, 2032.

6) *Prior Legislation.*

- a) SB 284 (Stern) of 2022, would have expanded the existing industrial injury rebuttable presumption for PTSD to additional firefighters, public safety dispatchers, public safety telecommunicators, and emergency response communication employees and was substantially similar to this bill. SB 284 was vetoed by the Governor. In his veto message, Governor Newsom stated:

Current law, applicable for injuries occurring on or after 2020 and to be repealed on 1/1/2025, allows a rebuttable presumption of PTSD injury to apply for specified classes of active firefighting members, peace officers, and fire and rescue service coordinators who work for the Office of Emergency Services. This presumption is a careful step acknowledging the increasingly hazardous conditions to which the subject class members are exposed, balanced against the principles of workers' compensation law that dictates conservatism with respect to presumptions and psychiatric injuries. As such, it was intended to allow for the study of the benefits and effectiveness of the PTSD presumption.

Expanding coverage of the PTSD injury presumption to significant classes of employees before any studies have been conducted on the existing class for whom the presumption is temporarily in place could set a dangerous precedent that has the

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

potential to destabilize the workers' compensation system going forward, as stakeholders push for similarly unsubstantiated presumptions.

- b) SB 542 (Stern, Chapter 390, Statutes of 2019) created the PTSD industrial injury presumption for firefighters and peace officers.
- 7) *Arguments in Support.* CPF, one of the sponsors of this bill, write in support stating that “It is imperative that the current presumption afforded to many firefighters and law enforcement personnel across the state be maintained and that the protections be extended to the additional members of public safety identified in this bill. This will help facilitate timely treatment for a firefighter, law enforcement officer or public safety dispatchers who is suffering with a PTSI and in doing so, enables a quick recovery and return to work.”
- 8) *Arguments in Opposition.* In opposition to this bill, a coalition of employers and insurers including the American Property Casualty Insurance Association, the California Association of Joint Powers Authorities, and the California Coalition on Workers’ Compensation state: “There is no objective basis to evaluate the operation of current law, the need for this expansion, or the impact of stripping away protections for taxpayer-funded public entities. It is clear that SB 623 would drive up costs for struggling public entities that are trying to provide emergency services, 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 Chapter National Emergency Number Association (CALNENA)
 California Correctional Peace Officers Association (CCPOA)
 California Correctional Peace Officers Association Benefit Trust
 California Labor Federation, Afl-cio
 California Professional Firefighters
 California Statewide Law Enforcement Association
 Peace Officers Research Association of California (PORAC)

Opposition

American Property Casualty Insurance Association
 California Association of Joint Powers Authorities (CAJPA)
 California Coalition on Workers Compensation
 California Joint Powers Insurance Authority
 California Schools Joint Powers Authority
 California Special Districts Association
 California State Association of Counties (CSAC)
 County of Monterey
 Exclusive Risk Management Authority of California
 Golden State Risk Management Authority
 League of California Cities
 Northern California Cities Self Insurance Fund
 Northern California Special Districts Insurance Authority
 Ontario; City of

Public Risk Innovation, Solutions, and Management (PRISM)
Redwood Empire Schools Insurance Group
Rural County Representatives of California (RCRC)
Self Insurance Risk Management Authority
Small Cities Organized Risk Effort
The Public Entity Risk Management Authority
West San Gabriel Workers Compensation JPA

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