
OLR Bill Analysis

sHB 5533

AN ACT CONCERNING WORKERS' COMPENSATION COVERAGE FOR PUBLIC EMPLOYEES WITH POST-TRAUMATIC STRESS DISORDER.

SUMMARY:

This bill extends eligibility for limited workers' compensation benefits to state and municipal employees diagnosed, by a state-licensed psychiatrist or psychologist, with post traumatic stress disorder (PTSD) stemming from seeing, in person, a traumatic event or its "immediate aftermath" (the scene of a traumatic event for up to six hours after it is secured by law enforcement officers). For an employee to qualify for the benefits, the employment must have caused him or her to see an event that:

1. was extraordinary because of the number or severity of casualties,
2. involved the death or serious bodily injury of one or more people,
3. was caused by an intentional human act and not by natural cause or motor vehicle collision,
4. does not happen in the usual course of the employee's employment, and
5. occurred on or after December 14, 2012 (the date of the Sandy Hook elementary school massacre).

Under existing law, which the bill does not change, workers' compensation claims must be filed within (1) one year from the date of the accident or (2) three years from the manifestation of a symptom of the occupational disease giving rise to the claim (CGS § 31-294c). Thus, to qualify for compensation under the one-year filing provision, a

Sandy Hook claimant would have had to file by December 14, 2013. In addition, a retroactive application for workers' compensation benefits could perhaps be vulnerable to a legal challenge under the contract clause of the U.S. Constitution (see COMMENT).

EFFECTIVE DATE: October 1, 2014

WORKERS' COMPENSATION BENEFITS AND PTSD DIAGNOSIS

With limited exceptions, mental and emotional impairments do not qualify for workers' compensation coverage under current law, unless they stem from a work-related physical injury (see BACKGROUND). One exception is a firefighter diagnosed with PTSD stemming from seeing the death of another firefighter in the line of duty.

The bill expands the definition of "personal injuries" under the workers' compensation law, allowing state or municipal employees diagnosed with PTSD related to a traumatic event (as described above) to qualify for workers' compensation benefits. The employee must be diagnosed by a qualified psychologist or psychiatrist who determines that the PTSD originated from seeing the traumatic event or its aftermath in person. A "qualified" psychiatrist or psychologist is one licensed by the state and certified by a recognized American medical specialty board in psychiatry or a psychology.

Under the bill, the workers' compensation benefits available to an eligible employee are limited to treatment by a psychologist or psychiatrist on the approved list of practicing physicians established by the Workers' Compensation Commission. The bill does not provide wage replacement benefits.

BACKGROUND

Workers' Compensation

The workers' compensation system serves as a substitute for the court system and provides employees with an "exclusive remedy" for work-related injuries. Under existing law, mental or emotional impairment qualifies for workers' compensation only if the impairment:

1. arises from a physical or occupational disease;
2. in the case of a police officer, is caused by using, or being subjected to, deadly force in the line of duty; or
3. in the case of a firefighter, is diagnosed as PTSD stemming from witnessing the death of another firefighter in the line of duty.

PTSD

PTSD is an anxiety disorder that some people develop after seeing or experiencing an event that caused or threatened to cause serious harm or death. Symptoms include flashbacks or bad dreams, emotional numbness, intense guilt or worry, and angry outbursts. Traumatic events that may trigger PTSD include military combat, natural disasters, and violent crime. According to the National Institute of Mental Health, PTSD symptoms last at least one month.

Related Bill

sSB 56, reported favorably by the Labor Committee, expands the definition of “personal injuries” under the workers’ compensation law, thereby allowing an employee to qualify for benefits if:

1. during the course of his or her duties, the employee sees (a) a person’s death or maiming or (b) its immediate aftermath;
2. the death or maiming was intentionally caused by another person; and
3. a licensed psychiatrist or psychologist diagnoses the employee with a mental or emotional impairment and determines that it originated from the employee seeing the crime or crime scene.

The bill also extends workers’ compensation wage replacement benefits to (1) police officers who suffer a mental or emotional impairment caused by using, or being subjected to, deadly force in the line of duty and (2) firefighters diagnosed with PTSD caused by witnessing the death of another firefighter in the line of duty.

COMMENT

Possible Contract Clause Violation

In general, many employers provide workers' compensation benefits through insurance policies purchased from third-party insurance providers. Before issuing these policies, the insurer determines the potential risks for which the policy may become payable and charges the employer a premium based on those risks. Because the bill applies retroactively to December 14, 2012, it could require a workers' compensation insurance policy to pay benefits for which it never charged or collected appropriate premiums. To the extent that such a policy might be considered a contract, the bill could be vulnerable to a legal challenge under the constitution's contracts clause, which bars states from passing any laws that impair contractual obligations. But, the U.S. Supreme Court has also ruled that a challenged law will not be held to impair the contract clause if the impairment, although substantial, is reasonable and necessary to fulfill an important public purpose (*Energy Reserves Group v. Kansas Power & Light*, 459 U. S. 400, 411-412 (1983)).

COMMITTEE ACTION

Public Safety and Security Committee

Joint Favorable Substitute

Yea 18 Nay 5 (03/18/2014)