



2019 ASSEMBLY BILL 569

October 25, 2019 - Introduced by Representatives HORLACHER, EMERSON, ALLEN, ANDERSON, BALLWEG, BRANDTJEN, BROSTOFF, CONSIDINE, DITTRICH, DOYLE, EDMING, KERKMAN, KRUG, KULP, MURSAU, NOVAK, OTT, PETRYK, POPE, SHANKLAND, SINICKI, SKOWRONSKI, SORTWELL, SPIROS, SPREITZER, STUBBS, STUCK, SUBECK, C. TAYLOR and VRUWINK, cosponsored by Senators JACQUE, BEWLEY, WANGGAARD, ERPENBACH, JOHNSON, MARKLEIN, NASS, SCHACHTNER and WIRCH. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to amend* 102.42 (1); and *to create* 102.17 (9), 102.42 (1p) and 102.44
2 (7) of the statutes; **relating to:** claims for compensation for post-traumatic
3 stress disorder by police officers and fire fighters under the worker's
4 compensation law.

Analysis by the Legislative Reference Bureau

This bill makes changes to the conditions of liability for worker's compensation benefits for a law enforcement officer or a fire fighter (public safety officer) who is diagnosed with post-traumatic stress disorder.

The bill provides that if a public safety officer is diagnosed with post-traumatic stress disorder by a licensed psychiatrist or psychologist and the mental injury that resulted in that diagnosis is not accompanied by a physical injury, that public safety officer can bring a claim for worker's compensation benefits if the conditions of liability are proven by a preponderance of the evidence and the mental injury is not the result of a good-faith employment action by the person's employer. Under the bill, such an injured public safety employee is not required to demonstrate a diagnosis based on unusual stress of greater dimensions than the day-to-day emotional strain and tension experienced by similarly situated employees as required under *School District No. 1 v. DILHR*, 62 Wis. 2d 370, 215 N.W.2d 373 (1974).

The bill also limits liability for treatment for a mental injury that is compensable under the bill's provisions to no more than 32 weeks after the injury is first reported.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 102.17 (9) of the statutes is created to read:

2 102.17 (9) (a) In this subsection:

3 1. “Fire fighter” means any person employed on a full-time basis by the state
4 or any political subdivision as a member or officer of a fire department, including the
5 first class cities and state fire marshal and deputies.

6 2. “Post-traumatic stress disorder” means that condition, as described in the
7 5th edition of the Diagnostic and Statistical Manual of Mental Disorders by the
8 American Psychiatric Association.

9 (b) In the case of a mental injury that is not accompanied by a physical injury
10 and that results in a diagnosis of post-traumatic stress disorder in a law enforcement
11 officer, as defined in s. 23.33 (1) (ig), or a fire fighter, the claim for compensation for
12 the mental injury, in order to be compensable under this chapter, is subject to all of
13 the following:

14 1. The mental injury must satisfy all of the following conditions:

15 a. The diagnosis of post-traumatic stress disorder is made by a licensed
16 psychiatrist or psychologist.

17 b. The conditions of liability under s. 102.03 (1) are proven by the
18 preponderance of the evidence.

19 2. The mental injury may not be a result of any of the following actions taken
20 in good faith by the employer:

21 a. A disciplinary action.

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1 b. A work evaluation.

2 c. A job transfer.

3 d. A layoff.

4 e. A demotion.

5 f. A termination.

6 3. The diagnosis does not need to be based on unusual stress of greater
7 dimensions than the day-to-day emotional strain and tension experienced by
8 similarly situated employees.

9 **SECTION 2.** 102.42 (1) of the statutes is amended to read:

10 102.42 (1) TREATMENT OF EMPLOYEE. ~~The~~ Subject to the limitations under sub.
11 (1p), the employer shall supply such medical, surgical, chiropractic, psychological,
12 podiatric, dental, and hospital treatment, medicines, medical and surgical supplies,
13 crutches, artificial members, appliances, and training in the use of artificial
14 members and appliances, or, at the option of the employee, Christian Science
15 treatment in lieu of medical treatment, medicines, and medical supplies, as may be
16 reasonably required to cure and relieve from the effects of the injury, and to attain
17 efficient use of artificial members and appliances, and in case of the employer's
18 neglect or refusal seasonably to do so, or in emergency until it is practicable for the
19 employee to give notice of injury, the employer shall be liable for the reasonable
20 expense incurred by or on behalf of the employee in providing such treatment,
21 medicines, supplies, and training. When the employer has knowledge of the injury
22 and the necessity for treatment, the employer's failure to tender the necessary
23 treatment, medicines, supplies, and training constitutes such neglect or refusal. The
24 employer shall also be liable for reasonable expense incurred by the employee for
25 necessary treatment to cure and relieve the employee from the effects of occupational

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1 disease prior to the time that the employee knew or should have known the nature
2 of his or her disability and its relation to employment, and as to such treatment subs.
3 (2) and (3) shall not apply. The obligation to furnish such treatment and appliances
4 shall continue as required to prevent further deterioration in the condition of the
5 employee or to maintain the existing status of such condition whether or not healing
6 is completed.

7 **SECTION 3.** 102.42 (1p) of the statutes is created to read:

8 102.42 (1p) LIABILITY FOR TREATMENT OF CERTAIN MENTAL INJURIES. The employer
9 of an employee whose injury is a mental injury that is compensable under s. 102.17
10 (9) is liable for the employee's treatment of the mental injury for no more than 32
11 weeks after the injury is first reported.

12 **SECTION 4.** 102.44 (7) of the statutes is created to read:

13 102.44 (7) In the case of an employee whose injury is a mental injury that is
14 compensable under s. 102.17 (9), the period of disability may not exceed 32 weeks
15 after the injury is first reported.

16 **SECTION 5. Nonstatutory provisions.**

17 (1) WORKER'S COMPENSATION INSURANCE; RATE APPROVAL; NOTICE. The
18 commissioner of insurance shall submit to the legislative reference bureau for
19 publication in the Wisconsin Administrative Register a notice of the effective date
20 of new rates for worker's compensation insurance first approved by the
21 commissioner after the effective date of this subsection.

22 **SECTION 6. Initial applicability.**

