
Wisconsin Legislative Council

ACT MEMO



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2021 Wisconsin Act 29
[2021 Senate Bill 11]

**Worker's Compensation; PTSD
Coverage**

2021 Wisconsin Act 29 specifies the circumstances in which post-traumatic stress disorder (PTSD) is covered by worker's compensation for a police officer or full-time member of a fire department, and revises certain other aspects of the worker's compensation law.

The provisions of the act were among the provisions of 2019 Senate Bill 673, which was agreed upon and recommended to the Legislature by the worker's compensation advisory council.

PTSD

Background

Under the worker's compensation law, an employment-related mental injury, including PTSD, may be a covered injury.¹ However, the Wisconsin Supreme Court has held that, in order for a mental injury to be compensable, a person must show that the mental injury was caused by unusual stress that is outside the day-to-day emotional strain and tension that may be experienced by all employees.

Specifically, in *School District No. 1 v. Wisconsin Department of Industry, Labor, and Human Relations*, the Wisconsin Supreme Court held that mental injury is covered by worker's compensation only if it results from a situation of greater dimensions than the day-to-day mental stresses and tensions that all employees must experience. This is commonly referred to as the "unusual stress" test or the "greater dimensions" test.²

Later court decisions have interpreted this to mean that the stress that caused the disorder must be unusual for someone similarly situated in that type of occupation. In particular, if an event could foreseeably be encountered by personnel in a particular field, then it would not be compensable.³

The Act

The act creates specific circumstances in which PTSD may be a covered injury, if all other worker's compensation requirements are met.

Specifically, under the act, a worker's compensation claim by a law enforcement officer or a full-time member of a fire department may be compensable for a mental injury that results in PTSD if the PTSD diagnosis is made by a licensed psychiatrist or psychologist and the mental injury arose out of and in the course of the employment. The act specifies that the diagnosis does not need to be based on unusual

¹ Section 102.01 (2) (c), Stats.

² *School District No. 1 v. Wisconsin Department of Industry, Labor, and Human Relations*, 62 Wis. 2d 370 (1974).

³ See, for example, *Bretl v. LIRC*, 204 Wis. 2d 93 (Ct. App. 1996); *County of Wash. v. LIRC*, Wis. Ct. App. No. 2012AP1858-FT (Jan. 9, 2013, unpublished); *Swiss Colony, Inc. v. DILHR*, 72 Wis. 2d 46 (1976); *Probst v. LIRC*, 153 Wis. 2d 185 (Ct. App. 1989); *Jensen v. Employers Mut. Cas. Co.*, 161 Wis. 2d 253 (1991); and *Burt-Redding v. LIRC*, Wis. Ct. App. No. 2016AP916 (July 18, 2017, unpublished).

stress of greater dimensions than the day-to-day emotional strain and tension that may be experienced by similarly situated employees.

The act specifies that a PTSD claim by a law enforcement officer or a full-time member of a fire department is not compensable if the mental injury is the result of certain actions taken in good faith by an employer. In particular, a claim cannot be based on a good faith disciplinary action, work evaluation, job transfer, layoff, demotion, or termination.

The act limits the period of disability for PTSD to 32 weeks from the first report of the injury by a law enforcement officer or full-time member of a fire department. The act also specifies that compensation for PTSD is limited to three times in the person's lifetime. The lifetime limit on receiving compensation for PTSD applies regardless of changes in employment.

The act does not otherwise modify the unusual stress test, which would continue to apply under current case law for other work-related mental injuries, such as anxiety disorder or depression. The unusual stress test would also continue to apply to PTSD for other personnel not covered by the act, such as volunteer firefighters and emergency medical services practitioners, or firefighters and emergency medical services practitioners with a private company or "standalone" service outside of a fire department.

OTHER WORKER'S COMPENSATION PROVISIONS

Regarding the other worker's compensation provisions, the act amends prior law as follows:

- Specifies that an employer and employer's insurance company are subject to the statute of limitations, in addition to the employee and any dependents as specified under prior law.
- Allows a client of an employee leasing company to elect to be responsible for the worker's compensation coverage for leased employees, subject to certain requirements.
- Requires a health care provider to furnish a complete billing statement within 30 days of receiving a request for the billing statement from the employer's insurance company.
- Allows an employer or the employer's insurance company to make a lump sum payment, rather than payments in five annual installments as specified under prior law, to the work injury supplemental benefit fund when an injury results in death and the person has no dependents.
- Specifies that no payment is due to the work injury supplemental benefit fund when an injury results in death, in circumstances when the person violated a work policy concerning alcohol or drug use and the violation was a cause of the injury.

Effective date: The act took effect April 29, 2021. The act applies to a PTSD claim that is reported on or after new insurance rates for worker's compensation coverage are approved by the Office of the Commissioner of Insurance.

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