

Workers' Compensation and Mental Injury

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Mental Injuries in PTSD Context

- Summary update of workers' compensation coverage of mental injuries nationwide
 - Why are mental injuries covered?
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PTSD: Broader Public Interest

- Journal of Public Health Policy (2024) [45:562–574](#) explains basis of public interest
- First responders face a considerable amount of stress on the job and witness traumatic events regularly
- 2021: the National Fire Protection Agency recorded 26 million EMS calls to fire departments, a 10% increase from 2020
- 1980 to 2021: EMS calls increased 421%, but the number of firefighters remained constant across that interval at approximately 1,040,000

Public Policy

- High-stress jobs long known to be associated with psychological strain, poor organizational outcomes, and physical illness
- According to a comprehensive report by the Substance Abuse and Mental Health Services Administration ([SAMHSA](#)): 30 percent of all first responders in the United States develop behavioral health conditions due to stressors on the job
- Rates of depression, PTSD, and suicidality exceed those of the general population

Taxonomy of Mental Injuries

1. Physical trauma causing nervous injury
 - (“physical-mental”)
2. Mental stimulus causing physical injury
 - (“mental-physical”)
3. Mental stimulus causing nervous injury
 - (“mental-mental”)
 - PTSD falls into this third category

Coverage

- 34 states cover “mental-mental” injuries
 - Must “arise out of and in the course of employment”
 - States often disqualify mental-mental injuries resulting from certain personnel actions such as disciplinary actions, job transfers, demotions, or layoffs
 - States sometimes require enhanced proof standards like “predominant cause” (Maine)

Coverage

- 25 of the 34 states generally allow “mental-mental” benefits for *any employee* covered by workers’ compensation
 - Event that caused the injury must usually meet certain criteria (*unexpected, unusual, or extraordinary stress*)
 - Some states (e.g., Arkansas, Colorado, Connecticut, Ohio, and Oklahoma): mental injury must have been caused by *a specific type of event* or under *defined circumstances* (e.g., being a violent crime victim or witnessing someone’s death)

Coverage – First Responders

- Some “mental-mental” states use separate criteria for *First Responder claims* (e.g., Missouri, Nevada, and Wisconsin)
- Roughly eleven states (e.g., Alaska, California, Maine, Oregon, and Vermont) have a rebuttable presumption that a first responder’s PTSD claim is compensable.
 - The presumption usually places the *burden on the employer* to prove that the condition was not caused by the employment, *if* injury meets certain criteria (e.g., a PTSD diagnosis from a licensed psychiatrist or psychologist).

Coverage – First Responders

- 9 states (Florida, Idaho, Nebraska, New Hampshire, Texas, Virginia, Washington, West Virginia, and Wyoming) generally prohibit providing mental-mental workers' compensation benefits to employees, *but they make an exception for first responders who meet certain criteria*

Connecticut in 2023 – Alarming?

- Coverage broadened to all employees:
- Public Act No. 23-35: “AN ACT EXPANDING WORKERS' COMPENSATION COVERAGE FOR POST-TRAUMATIC STRESS INJURIES FOR ALL EMPLOYEES.”

Connecticut Categories:

31-294k(a)(12)(C) – Any employee who . .

- (i) Views a deceased minor;
- (ii) Witnesses the death of a person or an incident involving the death of a person;
- (iii) Witnesses an injury to a person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause;
- (iv) Has physical contact with and treats an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause;
- (v) Carries an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause; or
- (vi) Witnesses a traumatic physical injury that results in the loss of a vital body part or a vital body function that results in permanent disfigurement of the victim

Critical Point

- Not a presumption
- PTSD must “directly result” from the event and be a “substantial factor” in ensuing disability

Coverage – 2024 Expansion in New York

- “Where a worker files a claim for mental injury premised upon extraordinary work-related stress incurred at work, the board may not disallow the claim upon a factual finding that the stress was not greater than that which usually occurs in the normal work environment.” N.Y. Assembly Bill A5745
- Amends Ch. 67, Art. 2., Sec. 3(b) (passed both Houses)

Coverage – Other 2024 Activity

- Alaska (SB 147) created a presumption of compensability for PTSD in certain first responders
- Arizona (SB 1677) and Oklahoma (SB 1457) provide PTSD coverage (without presumption) for certain first responders
- Several states considered but failed to pass legislation to expand coverage for mental injuries to additional workers including Florida (HB 993/SB 1490), Iowa (HF 2065), Missouri (HB 2817), Virginia (HB 68), Washington (HB 2031), and Wisconsin (AB 1074/SB 992)

Mental Injury and Workers' Compensation - Why?

- Workers' compensation originally concerned with death caused by work-related physical injury
- More workers survived: benefit focus shifted to indemnity and medical payments associated with physical injury
- Explicitly part of workers' compensation grand bargain: workers' compensation in exchange for torts
- Pre WC: tort in *theory* covered *depression* from tortiously caused physical injury (“parasitic” – *eggshell skull*) – WC accepted

Other Scenarios - Evolution

- Mental/emotional “stimulus” on the job *might* cause physical injury: WC often accepted, but fights over whether work caused the injury, but *physical* injury seems easier for some states to cover
- No mental-mental in tort law at time of Grand Bargain
- If no coverage possible opening for NIED liability. See e.g. *Collins v. COP Wyoming*, 366 P.3d 521 (Wyo. 2016)

What does any of this have to do with Workers' Compensation?

- Isn't workers' compensation "meant" to cover physical injury only?
- Can it be definitively shown that work causes "mental injury"?
- Multiple causation contexts lead to unpredictability

