



PASSAGE OF SENATE BILL 542 PROTECTS SAFETY WORKERS AND THEIR FAMILIES

By Scott A. O'Mara

Senate Bill 542 was approved by Governor Newsom on October 1, 2019. This legislation acknowledges the unique experiences and events which safety personnel have, such as firefighters and peace officers. Their traumatic experiences and events constitute exposures which potentially can change not only the lives of the victims involved, but the safety workers and their families as well.

The post-traumatic stress which develops or manifests is subject to a presumption which is rebuttable – the presumption that the stress is work-related. This presumption can be extended beyond the last day of work, depending upon the length of time the worker has been in the safety assignment.

Of great significance, however, is the fact that Senate Bill 542 is subject to a sunset provision which indicates the bill will expire as of January 1, 2025. Therefore, it will be extremely important to monitor this legislation – which will be very beneficial to safety workers and their families – to ensure that further legislation with the same provisions to protect safety personnel is enacted well before the sunset date of January 1, 2025.

The new legislation is very direct in identifying the fact that safety officers are called to make life-and-death decisions, and it speaks specifically of their exposure “to a myriad of communicable diseases and known carcinogens” and the fact that they “are constantly at significant risk of bodily harm or physical assault while they perform their duties”. In addition, they witness such emotionally traumatic situations such as witnessing “a young child dying with their grief-stricken family”.

Senate Bill 542 further acknowledges:

“Constant, cumulative exposure to these horrific events makes firefighters and law enforcement personnel uniquely susceptible to the emotional and behavioral impacts of job-related stressors. This is especially evident given that the nature of the job often calls for lengthy separation from their families due to a long shift or wildfire strike team response.”

Even though these safety worker injuries are presumptive, workers still need to be prepared to articulate in a meaningful fashion what has occurred and the results of same. At times, workers will be in denial of the fact that post-traumatic stress can have an impact on their lives. Countering that denial can be difficult, or challenging at best. Injured safety workers must explain to their doctors their history of stressful exposures so the doctors will acknowledge the uniqueness of these exposures. SB 542 further states:

“This includes recognizing that severe psychological injury as a result of trauma . . . is a normal and natural human response to trauma, the negative effects of which can be ameliorated through diagnosis and effective treatment.”

Safety workers must be prepared for their employer to deny the existence of work stress and the impact of same. Therefore, safety workers must be prepared to discuss in detail the elements of their work which are stressful, and the impact of same on their life and their work.

Please note that for the presumption to apply, safety workers must have performed service for their employer for six months or more. However, it is not necessary for the six months to be continuous, and the six-month rule potentially does not apply if the post-traumatic stress disorder is caused by a sudden and extraordinary single event of employment. As to the “sudden extraordinary event of employment”, this has been subject to much litigation.

It is imperative for safety officers to seek legal counsel so they will have a greater grasp of the needed elements to support the presumption.

Of note also, the presumption is *not* absolute. It is a disputable element which must be proven with correct reflection as to the elements of employment which contributed to or caused the injury – in this case, post-traumatic stress disorder. A further caveat is that safety workers must recognize that their supervisor probably means well, but there are absolute privacy rules which greatly restrict and prevent supervisors/management from making inquiries. With the worker’s involvement of counsel, a proper development of the record can occur, thereby protecting safety officers and their families so injured workers will be granted the proper medical care to cure or relieve the effects of their PTSD.

Regarding privacy, please go to Law1199.com 2016 Issue #11 – “You Are Entitled to Privacy”. As set forth in that newsletter, the California Constitution, the Civil Code and the Labor Code, your supervisor is greatly limited from questioning you and seeking information regarding your PTSD claim. Therefore, you should speak with your attorney before you speak to your employer and/or an investigator or the claims adjuster.

For workers to accept and seek help for post-traumatic stress disorder is an element which potentially will allow them to continue with their employment, as well as continue to have a stable domestic relationship. Without this medical help and guidance, workers many times will respond inappropriately in the work situation and be subject to personnel actions which, in essence, are totally caused by the post-traumatic stress disorder. Even more importantly, untreated PTSD can result in a family breakdown and separation of the family unit.

Therefore, with SB 542, along with the willingness of injured safety workers to seek help, we hopefully will see improvement in the present situation by allowing workers to continue with their employment and maintain a strong domestic relationship.



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