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PTSD PRESUMPTION; 90-DAY RULE SHOULD BE REDUCED TO 30 DAYS & REMOVE THE EXPIRATION DATE OF 01/01/2025

BY: SCOTT A. O'MARA

Timelines are established for employers to determine whether a worker's injury or medical condition is work-related. These timelines are set forth pursuant to labor Code §5402, which provides that once an employer has knowledge of an injury or medical condition which is claimed to be job-related, the employer has 90 days to do studies and investigations to either validate or take issue with the injured worker's claim.

After 90 days from the date the employer has knowledge of a claim, if no decision has been made as to whether the claim is to be accepted or rejected, the claim is then presumed to be job-related. This presumption, however, potentially is rebuttable in special situations.

The 90-day window was re-evaluated relative to the advent of COVID-19 and its widespread effects, and the determination was made to reduce the window to 30 days for COVID cases.

A very significant condition which impacts safety workers --- such as police officers, deputy sheriffs, California Highway Patrolmen, firefighters and other groups --- is depression. Legislation pursuant to Labor Code §3212.15 created a presumption that if certain factors exist, post traumatic stress disorder (PTSD) is presumed to be compensable as of January 1, 2020, subject to the provision that the safety worker involved must have performed at least six months of services (which do not need to be continuous) for his/her department. The verbiage used is that the PTSD developed or manifested during a particular period of time, and the presumption will have application post-termination for a period of three months for each full year of work in the given capacity, but not to exceed 60 months (five full years) from the employee's last day of work in that capacity.

Of significance, however, is the fact that the presumption pursuant to Labor Code §3212.15 expires as of January 1, 2025.

The Rand Corporation --- a non-profit corporate entity which is classified as a “think tank” and does research and analysis regarding governmental and other entities as to the services they provide and the economic impact and value of those services --- has issued a study which found that the benefits provided by Labor Code §3212.15 for PTSD are justified by the work which police officers, deputy sheriffs, California Highway Patrolmen, correctional officers, probation officers, firefighters and other safety workers do.

The Rand Corporation found that .9% of claims involved PTSD affecting firefighters, and .7% involved PTSD affecting peace officers, compared to .4% for other workers. The study also noted the percentage of claims which were initially denied --- 23.6% of claims made by firefighters; 27.3% of claims made by peace officers; and 24.5% of claims made by correctional officers. The Rand Corporation further found that PTSD cases were denied more often than claims involving other compensable medical conditions, such as heart trouble, hernias and the back.

The Rand study also evaluated the costs for medical and other benefits for each group. There is a significant opportunity for the lowering of costs by evaluating the threshold pursuant to Labor Code §5402, which allows employers 90 days to accept or deny a claim of injury. If the threshold were reduced to 30 days, it would force employers to place a priority on the evaluation of post traumatic stress disorders, which in turn would result in a quicker response in providing the medical care needed to cure or relieve the effects of the PTSD, thereby allowing workers to heal faster with less residual disability, and return to work sooner.

One “time bomb” which remains in Labor Code §3212.15 is the repeal of this provision scheduled to take effect in January 2025. Repealing this provision automatically is going to cause more residual impairment, more time off from work, and many workers not recovering sufficiently to be able to return to their substantial duties.

The presumption for PTSD in Labor Code §3212.15 is a very strong positive move. At this time, it would be appropriate to re-evaluate the threshold of the 90-day rule and change it to 30 days to expedite care and treatment so injured workers can improve more quickly with less residual disability and be able to return to work sooner.

There is no question as to the horrendous exposures which safety officers have. The sunset clause pertaining to Labor Code §3212.15 should be removed to afford affected workers the continuation of medical care to cure or relieve the effects of their PTSD.

A significant note is that safety workers --- whether they are police officers, deputy sheriffs, California Highway Patrolmen, correctional officers, probation officers, firefighters or other safety workers --- are highly motivated, and the large majority of them want to continue with their chosen careers which provide public service to our society.

The presumption which exists regarding PTSD opens the door for safety workers to have fewer residual problems, increasing the likelihood that they will be able to continue with their employment longer. Moreover, the change from the 90-day rule to a 30-day rule will expedite the provision of care to cure and relieve injured workers from the effects of their injuries.

(*Newsletter 2022, Issue #12* sets forth the review of signed Legislation Senate Bill 1127 that modified the timeline for acceptance or denial of certain cases including PTSD from 90 to 75 days and potential penalty of up to $50,000.00 if unreasonable delay occurs. (Change in Labor Code that modified the 90-day rule to 75.) The expiration date of the Legislation has been extended to 01/01/2029.)

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