

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 689 Workers' Compensation Benefits for First Responders

SPONSOR(S): Giallombardo and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Villa	Toliver
2) Insurance & Banking Subcommittee	16 Y, 0 N	Herendeen	Luczynski
3) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Lee	Topp
4) State Affairs Committee			

SUMMARY ANALYSIS

Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. In addition to on-the-job injuries, employers may be required to provide benefits if an occupational disease causes death or disablement, is due to the nature of the employee's occupation, and the employee contracted the disease while on the job.

Mental or nervous injuries are generally not compensable unless they are triggered by a physical injury. However, the following special rules apply to certain first responders employed by state or local government (firefighters, paramedics, emergency medical technicians, and law enforcement officers):

- If the first responder is injured on the job and the injury triggers posttraumatic stress disorder (PTSD), the first responder may be eligible for medical benefits and compensation for lost wages;
- If the first responder is diagnosed with PTSD and demonstrates that the disorder arose out of employment, the first responder may be eligible for medical benefits;
- If the first responder experiences a qualifying event defined in the law and is subsequently diagnosed with PTSD, the first responder may be eligible for medical benefits and compensation for lost wages.

This bill addresses notice provisions for first responders seeking workers' compensation benefits for PTSD.

Currently, notice of a PTSD-related injury is due to the employer within 90 days of a qualifying event or the manifestation of the disorder, whichever is later. If the compensability of an injury is disputed, a claim must be filed within 52 weeks of the qualifying event.

The bill makes the notice of injury due within 90 days of a qualifying event or diagnosis of the disorder, whichever is later. Similarly, the bill extends the claim filing deadline to either 52 weeks of the qualifying event or diagnosis of the disorder, whichever is later.

Extending the claim deadline to one year after a PTSD diagnosis allows claims more than one year after a qualifying event. Symptoms of PTSD may begin shortly after a traumatic event or may not appear until years after the event.

The bill will have an indeterminate, but likely significant, negative fiscal impact on state and local governments and the private sector. See Fiscal Comments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. Employers must secure coverage and may do so by purchasing insurance from an authorized carrier or through an employee-leasing agreement, qualifying as a self-insurer, or purchasing coverage from the Florida Workers' Compensation Joint Underwriting Association, Inc., which is the state-sponsored insurer of last resort.¹ In return for providing compensation, the employer is relieved of liability for workplace injuries, and may only be sued for intentional acts that result in injury or death.² Florida's workers' compensation system is administered by the Department of Financial Services, Division of Workers' Compensation (DWC).

Benefits for Temporary and Permanent Disability

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.³ A work-related accident must be the major contributing cause of any resulting injury or illness, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.⁴ For work-related injuries, employees are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prostheses, for as long as the nature of the injury and process of recovery requires.⁵

Payments for lost wages, known as indemnity benefits, may be required if an employee has been disabled for at least eight days;⁶ indemnity benefits are generally payable at 66.67 percent of the employee's average weekly wage,⁷ up to the maximum weekly benefit established by law.⁸

Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, or permanent total disability and are payable as follows:

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.⁹
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.¹⁰

¹ S. 627.311(5)(a), F.S.

² Ss. 440.015, 440.09, 440.10, 440.38, and 627.313, F.S.

³ S. 440.13(1)(d), F.S., states: " 'Compensable' means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment."

⁴ S. 440.09(1), F.S.

⁵ S. 440.13(2)(a), F.S.

⁶ S. 440.12(1), F.S.

⁷ An injured worker's average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.

⁸ S. 440.15(1)-(4), F.S.

⁹ The Florida Supreme Court and the First District Court of Appeal in two cases found the general limitation on temporary indemnity benefits unconstitutional in circumstances where the injured worker had reached the 104-week limit on benefits, but was unable to return to work. The courts invalidated the 104-week limitation and replaced it with the previous statutory limit of 260 weeks. *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016); *Jones v. Food Lion, Inc.*, 202 So. 3d 964 (Fla. 1st DCA 2016).

¹⁰ S. 440.15(3), F.S.

- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, in which case the benefit is paid for no more than five years.¹¹

Occupational Diseases

In addition to on-the-job injuries, employers may be required to pay compensation or furnish benefits if an occupational disease causes death or disablement, is due to the nature of the employee's occupation, and the employee contracted the disease in the course of his or her employment.¹²

In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job presents a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.¹³

General Rules for Mental or Nervous Injuries

Mental or nervous injuries may be compensable, but only if the injury is accompanied by a physical injury that requires medical treatment. Thus, if a workplace accident causes both a physical injury and a related mental or nervous injury, both may be compensable so long as the physical injury that requires medical treatment is the major contributing cause (at least 50 percent responsible) of the mental or nervous injury. A mental or nervous injury caused by "stress, fright, or excitement" is not compensable.¹⁴

However, temporary disability benefits for a mental or nervous injury are limited to six months after a claimant reaches maximum medical improvement for the physical injury that triggered the mental or nervous injury.¹⁵ Additionally, benefits may not exceed a 1 percent limit on permanent psychiatric impairment benefits.¹⁶

Special Rules for First Responders

The Legislature recognized the unique occupational hazards associated with the work of first responders in 2007, by authorizing:

- Medical and indemnity benefits (lost wages) for first responders who demonstrate that a mental or nervous injury arose out of a physical injury suffered during the course of employment, and
- Medical benefits for first responders who did not suffer a physical injury but demonstrate, by clear and convincing evidence that a mental or nervous injury arose out of employment.

The law also relaxed the burden of proof for first responders suffering from occupational diseases caused by exposure to specific toxic substances, and exempted first responders from limits that typically apply to temporary disability benefits.¹⁷

Benefits for Posttraumatic Stress Disorder

¹¹ S. 440.15(1)(b), F.S.

¹² Ss. 440.09, and 440.151, F.S.

¹³ S. 440.151(2), F.S.

¹⁴ S. 440.093, F.S.

¹⁵ S. 440.093(3), F.S.

¹⁶ S. 440.14(3), F.S.

¹⁷ Ch. 2007-87, Laws of Fla., created s. 112.1815, F.S.

In 2018, the Legislature authorized medical benefits and compensation for lost wages for first responders who are diagnosed with PTSD (as described by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association).¹⁸ For the purpose of defining benefit eligibility, state law defines first responders as law enforcement officers, firefighters, or emergency medical technician (EMT) or paramedics employed by or serving as a volunteer for state or local government.¹⁹

As a result, a first responder who experiences one of the following qualifying events need not suffer a physical injury to qualify for medical benefits and be compensated for lost wages:

- Seeing a deceased minor;
- Witnessing the death of a minor;
- Witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Participating in the treatment of an injured minor who dies before or on arrival at a hospital emergency department;
- Transporting an injured minor who dies before or on arrival at a hospital emergency department;
- Seeing a decedent whose death was due to grievous bodily harm of a nature that shocks the conscience;
- Witnessing a death (including suicide) that involved grievous bodily harm of a nature that shocks the conscience;
- Witnessing a homicide, whether criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence;
- Witnessing an injury (including an attempted suicide) to a person who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the treatment of an injury (including attempted suicide) to a person who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or
- Transporting a person who was injured (including by attempted suicide) who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.²⁰

The following injuries qualify as grievous bodily harm of a nature that shocks the conscience: decapitation; degloving; enucleation; evisceration; impalement; severance; third degree burns on nine percent or more of the body; and exposure of one or more of the following internal organs: brain; heart; intestines; kidneys; liver; or lungs.²¹

Posttraumatic Stress Disorder

According to the American Psychiatric Association, PTSD is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event, such as a natural disaster, serious accident, terrorist act, war, or rape; or people who have been threatened with death, sexual violence, or serious injury.²² Exposure to an upsetting traumatic event may be indirect rather than first hand. PTSD can occur if a person learns of the violent death of a close family member or friend, or is repeatedly exposed to the horrible details of trauma.²³

Symptoms may include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. This can lead to avoidance of any stimuli that recalls the traumatic events, negative

¹⁸ Ch. 2018-124, Laws of Fla. amended s. 112.1815, F.S.

¹⁹ S. 112.1815(1), F.S.

²⁰ S. 112.1815(5), F.S.

²¹ R. 69L-3.009, F.A.C.

²² American Psychiatric Association, *What is Posttraumatic Stress Disorder*, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (last visited Jan. 24, 2022).

²³ *Id.*

thoughts about oneself or the world, and changes in emotional reactions to events, like being easily startled or having trouble sleeping or concentrating.²⁴

Symptoms may begin shortly after the traumatic event, or may not appear until years after the event. Rates of PTSD are higher among veterans, police officers, firefighters, and emergency medical personnel.²⁵

Notice Requirements

A first responder who suffers from PTSD must notify his or her employer within 90 days of a qualifying event identified in the law, or the manifestation of the disorder, whichever is later.²⁶

If the compensability of an injury is disputed, the first responder must file a petition for workers' compensation benefits within 52 weeks of the qualifying event.²⁷

A first responder who develops symptoms of PTSD after the one-year deadline for filing a claim has elapsed has no cause of action.²⁸

Effects of the Bill

The bill amends both the timeframe in which the employee must notify the employer of an injury and the timeframe in which a petition for workers' compensation benefits must be filed.

Notice to the employer would be required within 90 days of a qualifying event listed at s. 112.1815(5)(a)2, F.S., or diagnosis of the disorder, whichever is later.

A petition for workers' compensation benefits would be timely if filed within 52 weeks of a qualifying event listed at s. 112.1815(5)(a)2, F.S., or diagnosis of the disorder, whichever is later.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.1815, F.S., firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.

Section 2. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Benefits for first responders employed by a state agency or state university are paid from the State Risk Management Trust Fund (SRMTF) administered by DFS. Since the law change in 2018, two claims have been processed for state employees qualifying for PTSD benefits. As of January 12,

²⁴ Mayo Clinic, *Post-traumatic stress disorder (PTSD)*, <https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-caused/syc-20355967> (last visited Jan. 24, 2022).

²⁵ *Id.*

²⁶ S. 112.1815(5)(d), F.S.

²⁷ *Id.*

²⁸ *Palm Beach County Fire Rescue v. Wilkes*, 309 So. 3d 687 (Fla. 1st DCA, 2020).

2022, the Division of Risk Management has paid a combined total of \$200,000 for the two claims. Although DFS anticipates a potential increase in the number of compensable claims for PTSD benefits under the bill, DFS can likely absorb the costs within existing resources in the SRMTF.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

By law, local governments are deemed to be self-insured for workers' compensation purposes. Local governments employ a large number of first responders (law enforcement officers, firefighters, EMTs). Consequently, their workers' compensation costs will increase, although the magnitude of the increase is unknown. According to DFS data, the cost of PTSD claims filed statewide (non-state employees) since 2018 is \$5.7 million.²⁹ The potential increase in claims filed due to the expanded time for notice of injury and notice of claim under HB 689 will have an indeterminate, but likely significant, negative fiscal impact on local governments.

Based on statewide claims data collected by DFS, a total of 350 workers' compensation claims were filed by first responders suffering from PTSD since the legislation took effect in October 2018. There was no accompanying physical injury for 50 claims; in those instances, the average cost per claim is \$42,326.

Statewide PTSD Claims Data			
Claims	Indemnity	Medical	Total Cost
350	\$2,564,817	\$3,148,275	\$5,713,092

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the bill generates an increase in compensable workers' compensation claims, physicians who are authorized providers could experience an increase in patients and insurance carriers could experience an increase in claims. Private employers who employ first responders and secure their workers' compensation coverage through an insurance carrier may experience an increase in their respective premiums due to the increase in workers' compensation costs for first responders.³⁰ The fiscal impact is indeterminate, but could be significant.

D. FISCAL COMMENTS:

Providing a point of entry that is tied to the date of diagnosis, rather than manifestation of PTSD, likely would expand the time for notice of injury and notice of claim, and thereby lead to an increase of compensable claims. The number of additional claims that could be filed under the bill is unknown, but DFS indicates the potential negative fiscal impact on the State Risk Management Trust Fund could be significant based on the number of first responders employed by state agencies and universities.³¹ The State employs over 26,000³² law enforcement officers. However, local governments would likely experience the bulk of the cost increase from additional PTSD claims filed under the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

²⁹ Email from Austin Stowers, Director of Legislative Affairs, Department of Financial Services, RE: PTSD Data (Jan. 12, 2022).

³⁰ Department of Financial Services (DFS), Agency Analysis of 2022 Senate Bill 1066, p. 3 (Dec. 22, 2021).

³¹ DFS *supra* note 30, at 1 (Dec. 22, 2021).

³² Based on personnel data from People First reports run on Feb. 2, 2022.

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill would permit compensation claims long after a qualifying event and likely lead to an increase in compensable claims; however, an exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exemption may apply because all similarly situated state and local government employers of first responders are required to provide workers' compensation benefits.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.