



Client Memorandum

To: Florida Pension Clients

From: Klausner, Kaufman, Jensen & Levinson

Date: 3/13/2018

Re: Pending PTSD bill (SB 376)

MEMORANDUM

The purpose of this memo is to provide a preliminary summary of the "PTSD bill" (SB 376) which was adopted by a vote of 33-0 in the Senate and 114-0 in the House. The Governor has until March 27 to decide whether or not to veto the bill. If SB 376 becomes law, the Division of Financial Services will also be adopting rules.

By way of background, SB 376 grew out of at least three publically reported cases of PTSD resulting from the 2016 Pulse nightclub shooting in Orlando. A prior version of the bill failed to advance last year, but gained momentum this year in the aftermath of the Marjory Stoneman Douglas High School shooting. A press release from the State Fire Marshall and last minute support from the League of Cities were factors contributing to the Legislature's unanimous vote.

SB 376 amends Section 112.1815, Florida Statutes, governing employment-related accidents and injuries for first responders. The bill revises the workers' compensation "impact rule." As a result, physical injury is no longer required for a first responder to receive workers' compensation indemnity benefits for PTSD. While the bill is primarily intended to extend workers' compensation benefits under Chapter 440, the bill is anticipated to broadly apply to first responder "benefits," including Chapters 175 and 185.

SB 376's definitions and procedural requirements are summarized below. The specific workers' compensation provisions of the bill are beyond the scope of this memo.

Section (5)(a) provides that posttraumatic stress disorder (PTSD), as described in the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders, will now be recognized as a compensable occupational disease provided that the requirements of SB 376 are satisfied.

To be eligible for workers' compensation indemnity benefits the following hurdles must be met under Section (5)(a) and (b):

- The PTSD resulted from the first responder “acting within the course of his or her employment.”
- The first responder has been diagnosed with PTSD by a licensed psychiatrist.
- The PTSD must be demonstrated by “clear and convincing medical evidence.”
- The first responder submits a Notice of Injury within 90 days of the later of the “qualifying event” or the “manifestation” of the PTSD. The claim will be barred if it is not filed within 52 weeks of the qualifying event.
- One of the following eleven circumstances (“qualifying events”) must be present:
 1. “Seeing for oneself a deceased minor”;
 2. Directly witnessing the death of a minor;
 3. Directly witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital;
 4. Participating in the physical treatment of an injured minor who subsequently dies before or upon arrival at a hospital;
 5. “Manually transporting” an injured minor who subsequently dies before or upon arrival at a hospital;
 6. “Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience” (grievous bodily harm);
 7. Directly witnessing a death that involves grievous bodily harm;
 8. Directly witnessing a homicide;
 9. Directly witnessing an injury to a person who subsequently dies before or upon arrival at a hospital with grievous bodily harm;
 10. Participating in the physical treatment of an injury to a person who subsequently dies before or upon arrival at a hospital with grievous bodily harm; or
 11. Manually transporting a person who is injured and subsequently dies before or upon arrival at a hospital with grievous bodily harm.

As is evident from this list, these eleven requirements are fact intensive and in many cases depend on the eventual definition of the new, undefined term “grievous bodily harm of a nature that shocks the conscience.” For this reason, the Department of Financial Services is required to adopt rules.

All employing agencies will be required to provide educational training relating to mental health awareness, prevention, mitigation and treatment.