

NEWLY SIGNED SENATE BILL 542:

New Rebuttable Presumptions for Firefighters and Peace Officers

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Given the high risk and dangers associated with law enforcement and safety occupations, workers' compensation provides a number of presumptions for certain types of injuries. The statutory presumptions mandate that the injury occurred AOE/COE and thus shifts the burden of proof to the employer that the injury did not occur on the job. These rebuttable presumptions are often difficult to overcome. Only members that are specifically enunciated in each Labor Code Section are entitled to a particular presumption. Previously the presumptive injury claims applied to cancer, heart, hernia, pneumonia and low back claims (police).

On October 1, 2019, Governor Gavin Newsom signed into law SB 542 which will have a significant impact on psychiatric claims as it relates to firefighters and law enforcement officers. The bill creates a rebuttable presumption that firefighters and certain peace officers diagnosed with PTSD have incurred their injury on an industrial basis.

Proponents of the bill anchored their arguments on the inherent risks and dangers of the occupations such as witnessing the loss of life and exposure to communicable diseases and carcinogens. They highlighted the uniquely dangerous risks in keeping the community safe, noting the stress, depression, and suicide rates, as well referencing the similarity of their duties to those of military personnel. Proponents believe that recognition of occupational injuries related to post-traumatic stress would encourage workers to seek diagnosis and treatment without stigma.

As always, we at Laughlin, Falbo, Levy & Moresi LLP are working to familiarize ourselves with this bill and its potential impact on workers' compensation claims. Here are some notable aspects of the bill.

Existing law provides that there is a disputable presumption that various medical conditions that developed or manifested during a period can result in an "injury." The bill provides that the term "injury" also includes post-traumatic stress developed or manifested during a period the injured person is in the service of the department or unit. Post-traumatic stress disorder is defined as diagnosed by the most recent edition of the

DSM published by the American Psychiatric Association. The bill applies to injuries occurring on or after **January 1, 2020** and sunsets on **January 1, 2025** unless legislative action is taken to extend it.

As the bill creates a “rebuttable presumption”, the burden of proof is placed on employers to dispute the presumption by producing contrary evidence. This obviously lowers the threshold for filing a psychological injury claim based on post-traumatic stress disorder. Unless controverted by other evidence, the appeals board is bound to find in accordance with the presumption. The presumption is **extended for 3 calendar months for each full year of service**, not to exceed 60 months from the last date actually worked in the specified capacity.

There is a limitation to the presumption as firefighters and peace officer employees must have worked for at least 6 months to receive compensation; however, there is an exception for when the injury is caused by a **sudden and extraordinary** employment condition. This term “sudden and extraordinary” is the same term used under Labor Code 3208.3 as an exception to the six-month employment requirement for psych claims and the exception to the bar for post-termination psych claims.

The bill applies to a wide variety of firefighting members and departments, including active firefighting members, volunteers, and fire and rescue services coordinators. It also applies to a large variety of peace officers including sheriffs, members of the California Highway Patrol, correctional officers, state university police, and more.

Given the lowered floor for filing a psychological claim and range of employees covered by the bill, this is likely to result in an increase of stress-related claims for long term employees of California fire and law enforcement groups. As the burden of proof lies with the employer to rebut this presumption, upcoming decisions will provide a better understanding of what evidence is required to overcome it. We will follow along closely and keep you informed.

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