



October 12, 2023

Dear Members of the House Veterans Affairs and Emergency Preparedness, subcommittee on Security and Emergency Response Readiness:

Thank you for meeting with us on October 6, 2023, regarding House Bill 1632 which gives a wider avenue for first responders to receive compensation and benefits under the Pa. Workers' Compensation Act ("Pa. WCA") for post-traumatic stress injuries ("PTSI"). As a follow-up to our meeting, our coalition of municipal stakeholders ask that you please consider our updated position and the proposed alternative language for Pa. HB 1632.

The sentiment of our October 4, 2023 letter remains: We want to help ensure that Pa. HB 1632 provides a true and reliable benefit for our first responders – one that is sustainable over the long-term and funded by a prudent financial model that is insurable at a reasonable cost to local governments and their taxpayers. Our proposal seeks to address your interest in providing first responders with a clearer path forward with true PTSI claims while ensuring a sustained and financially viable benefit. We appreciate this opportunity to contribute to creating a solution that balances the needs of our first responders, local government entities, and the Commonwealth's taxpayers.

### **Pennsylvania House Bill 1632**

As noted in our October 4, 2023 letter, legislation providing an avenue for first responders to receive compensation and benefits under the Pa. WCA for PTSI without showing an abnormal working environment should be appropriately tailored to ensure financial sustainability, minimize specious claims, and reduce the likelihood of legal challenges. Pa. HB 1632 includes four critical provisions, which we commend:

1. PTSI is listed as an injury under Section 301 of the Act (by adding a new Section 301(g)) as opposed to a presumptive occupational disease under Section 108.

2. PTSD is defined as “post-traumatic stress disorder as defined by the American Psychiatric Association and documented in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 5th edition.” This ensures the diagnosis is consistent with generally accepted scientific standards.
3. Pa. HB 1632 includes a (3) year limitations period for filing a claim, which begins to run when the claimant is diagnosed with PTSD.
4. Pa. HB 1632 expressly excludes compensation for PTSD caused by an employment action, including disciplinary action, job performance evaluation, job transfers or termination of employment.

### **Hallmarks of Successful Legislation**

In addition to the language referenced above, the following criteria would also support the above-referenced goals of balanced legislation.

1. Clarify that the claimant’s PTSD be caused by direct exposure to a defined traumatic event, consistent with the DSM-5 diagnostic criteria. This requirement serves two purposes:
  - a. Provides an objective evidentiary basis for assessing the PTSD diagnosis and therefore the credibility of the claim itself; and
  - b. Tying the PTSD diagnosis to a “traumatic event” will allow an objective factfinder to identify the responsible employer. For example, if a police officer works 20 years for one police department and then moves to another where the officer is diagnosed with PTSD, it is important to determine when the triggering traumatic event(s) occurred.

**Note:** Section 301(g)(4) seemingly aligns with this approach as it allows for an employee to make a claim against a former employer who was their employer “at the time of the direct exposure to the traumatic event which caused the injury.” (emphasis added). However, it is not clear. Explicitly adding this requirement in Section 301(g)(1) would alleviate potential legal complications associated with ambiguous language.
2. Provide a specific list of “traumatic events” that qualify for a bona fide “mental-mental” PTSD in accordance with the DSM-5 diagnostic criteria, such as:
  - a. Viewing a deceased minor;
  - b. Witnessing the death of a person or an incident involving the death of a person as a result of a violent event, including, without limitation, a homicide, suicide or mass casualty incident;
  - c. Witnessing an injury to a person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause;

- d. Having physical contact with and treating an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause.
3. Require the PTSD diagnosis be made by a licensed psychiatrist or psychologist with appropriate clinical expertise.
4. Require incident reports or other documentation of the qualifying traumatic event(s) as a pre-condition for submitting any PTSD claim. Police, fire, and EMS reports are issued for each incident requiring response from those departments, so this would not be a high burden.
5. The quality of the evidence presented by both parties should be “substantial competent evidence,” so that incompetent or speculative medical testimony is excluded from consideration.
6. Considering that the 3-year limitations period for filing a claim would begin to run when the claimant is diagnosed with PTSD, identify the responsible employer by adding the following provision: “*For purposes of determining liability under the act, the date of injury shall be the last date of the claimant’s direct exposure to the traumatic event(s) which caused the injury.*” Again, this language is consistent with the direct exposure requirement set forth in Section 301(g)(4).
7. Make the legislation effective at least twelve (12) months after enactment as opposed to the current sixty (60) days after enactment to provide state and local governments and their insuring entities with time to adjust workers’ compensation premiums based on this new exposure.
8. Include a sunset provision in the law to allow the legislature to gather more information on the associated costs.
9. Predicate the ability to receive benefits on the direct exposure to a defined traumatic event occurring on or after the legislation’s date of enactment.
10. Include a duration cap on benefits to guard against runaway claims.

### **PTSD Legislation in Other States**

In addition to the requirements set forth above, below is an updated list of similar laws enacted in other states. Notably, there are common fiscally responsible provisions included in these laws that are omitted from Pa. HB 1632. Such provisions include:

1. Duration cap on benefits<sup>1</sup>
2. Precluding injuries that occurred prior to the legislation enactment date<sup>2</sup>
3. Sunset provision<sup>3</sup>
4. Specific list of traumatic events<sup>4</sup>
5. Allowing local government entities to “opt-in” to provide this enhanced benefit<sup>5</sup>

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<sup>1</sup> See Connecticut, Virginia, Wisconsin, and Wyoming.

<sup>2</sup> See California, Connecticut, Idaho, Minnesota, Texas, and Virginia.

<sup>3</sup> See California, Idaho, Maine, and West Virginia

<sup>4</sup> See Colorado, Connecticut, Florida, Nevada, and Virginia.

<sup>5</sup> See West Virginia.

These features act as important governors on this type of legislation where underwriting data is lacking and not mature.

<b><u>State</u></b>	<b><u>Date of Enactment</u></b>	<b><u>Act or Bill Number</u></b> <i>(hyperlinked to viewable document)</i>
<b>Wisconsin</b>	April 27, 2021	<a href="#">Act 29 of 2021</a>
<b>West Virginia</b>	April 10, 2021	<a href="#">House Bill No. 3107</a>
<b>Ohio</b>	January 9, 2021	<a href="#">House Bill No. 308</a>
<b>Nebraska</b>	August 15, 2020	<a href="#">Legislative Bill No. 963</a>
<b>Virginia</b>	April 22, 2020	<a href="#">Senate Bill No. 561</a>
<b>Wyoming</b>	March 26, 2020	<a href="#">Enrolled Act No. 56</a>
<b>California</b>	October 1, 2019	<a href="#">Senate Bill No. 542</a>
<b>Connecticut</b>	June 18, 2019	<a href="#">Substitute Senate Bill No. 164</a>
<b>Oregon</b>	June 13, 2019	<a href="#">Senate Bill No. 507</a>
<b>Nevada</b>	June 3, 2019	<a href="#">Assembly Bill No. 492</a>
<b>Idaho</b>	March 12, 2019	<a href="#">Senate Bill No. 1028</a>
<b>Minnesota</b>	May 20, 2018	<a href="#">House File No. 3873</a>
<b>Florida</b>	March 27, 2018	<a href="#">Senate Bill No. 376</a>
<b>Washington</b>	March 26, 2018	<a href="#">Substitute Senate Bill No. 6214</a>
<b>Maine</b>	July 24, 2017	<a href="#">Public Law, Chapter 294</a>
<b>Vermont</b>	June 15, 2017	<a href="#">Act 80 of 2017</a>
<b>Colorado</b>	June 5, 2017	<a href="#">House Bill No. 17-1229</a>
<b>Texas</b>	June 1, 2017	<a href="#">House Bill No. 1983</a>

### **Alternatives to Using the Workers Compensation System**

Considering the inevitable and potentially uninsurable costs associated with enhancing benefits for first responders suffering from PTSI through the workers' compensation system, we continue to urge you to consider alternative approaches. A few examples are provided below:

1. In April 2021, Ohio created the State Post-Traumatic Stress Fund, a new stand-alone fund separate from the workers' compensation system, to pay for compensation and medical benefits to public safety officers disabled by post-traumatic stress disorder (PTSD) received in the course of, and arising out of, employment as a public safety officer but without an accompanying physical injury. Additional information regarding the legislation can be found at:  
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-308>.
2. South Carolina appropriates money at the state level that goes into a fund to defray the medical expenses associated with PTSI treatment that are incurred under a first responder's health plan (e.g., reimbursement of copays and deductibles).

3. Colorado pioneered a heart and cancer benefits trust that seemingly could be applied in the PTSI context. Essentially, these trusts provide a parallel track to workers' compensation without the legal complications typically found in workers compensation. Following are the links to the Colorado trust which include a wealth of detailed information on how the programs work: <http://www.cfhtrust.com/heart/> and <http://www.cfhtrust.com/cancer/>.
4. In Pennsylvania, Governor Wolf signed Act 69 of 2020 into law, which requires the establishment of mental wellness and stress management guidelines for first responders, establishes peer-to-peer support programs for first responders to discuss mental health issues, establishes a toll-free helpline that first responders can call when dealing with mental health issues, establishes the Statewide Critical Incident Stress Management Program and increases required training for a variety of topics including PTSI.
5. Governor Wolf also signed Act 59 of 2020 in law, which provides law enforcement officers with mental health evaluations for PTSI upon officer request, recommendation of a supervisor or after the use of lethal force. Act 59 also requires law enforcement officers be assigned to "administrative duty" if experiencing symptoms of PTSI until they are cleared to resume full duty.

Thank you again for allowing us the opportunity to provide our updated position and response to Pa. HB 1632. If you would like to discuss the contents of this letter further, you may reach out to any of the stakeholders listed below.

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