

New PA Law Lowers Standard for First Responders to Qualify for Workers' Compensation for Post-Traumatic Stress Injuries

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On Tuesday, October 29, 2024, Governor Shapiro signed into law Act 121 of 2024, which amends the Workers' Compensation Act by broadening the eligibility of "first responders" to receive workers compensation for post-traumatic stress injuries. The Act will become effective in one year after its passing, on October 29, 2025.

Act 121 will provide workers compensation to first responders who, based on the diagnosis of a licensed psychologist or psychiatrist, have a post-traumatic stress injury as a result of a "qualifying traumatic event," which the Act defines as an incident or exposure:

- (1) Resulting in serious bodily injury or death to an individual;
- (2) Involving a minor who has been injured, killed, abused, or exploited;
- (3) Involving an immediate threat to the life of the claimant or another individual;
- (4) Involving mass casualties; or
- (5) Responding to crime scenes for investigations.

Currently, an employee is only eligible for workers' compensation for psychological injuries if they demonstrate that the injury resulted from "abnormal working conditions." This standard requires a claimant to prove: (1) by objective evidence that he/she suffered a psychiatric injury and (2) that such injury is other than a subjective reaction to normal working conditions. *Martin v. Ketchum, Inc.*, 568 A.2d 159, 164-65 (Pa. 1990). Act 121 expressly includes the stipulation that "[a] post-traumatic stress injury suffered by a first responder shall not be required to be the result of an abnormal working condition to be a compensable injury under this Act." By explicitly eliminating this requirement, Act 121 will broaden the number of psychological claimants who qualify for workers' compensation.

The Act applies to "first responders," which includes EMS providers and volunteers who are designated by a municipality as the primary EMS provider or dispatched by a public safety answering point in accordance with a mutual aid agreement. It also includes volunteers and employees of fire companies who respond to emergency calls, Pennsylvania State Police officers, and "peace officers" who respond to emergency calls (defined as persons who are vested by law with a duty to maintain public order or to make arrests for offenses).

The Act limits the availability of workers' compensation benefits on account of these injuries to a period of 104 weeks (or two years). These claims must be filed no later than three (3) years after the date of the diagnosis, and the injury must have occurred within five (5) years before the effective date of the law. In addition, the Act permits a claimant who is diagnosed with PTSD after they have separated from employment to apply for workers' compensation benefits as long as the qualifying traumatic event occurred during their period of employment.

The Act does not extend coverage for post-traumatic stress injuries that occurred because of disciplinary actions, job or performance evaluations, job transfers, and employment terminations.

It is very likely that employers will see a sharp increase in workers' compensation claims for post-traumatic stress injuries when the law becomes effective. There is good reason to anticipate that this law could impact other areas of employment, like retirement. Employers should take steps to ensure that an employee being adjudicated as disabled under the Workers' Compensation Act will not automatically entitle them to disability retirement benefits. Before the Act becomes effective, consider having the language in your pension plans and collective bargaining agreements evaluated to ward off any additional impact of Act 121 on these benefits.