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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Chairwoman Erickson and Committee on Commerce
From: Charles Reimer, Office of Revisor of Statutes
Date: 2/21/2022
Subject: SB 491

SB 491 permits workers compensation benefits for first responders who suffer from post-traumatic stress disorder.

Post-traumatic stress disorder made compensable under the workers compensation act

Under current workers compensation law, compensation for post-traumatic stress disorder is generally not available, because there is typically no associated physical injury. Under current law, "injury" means "any lesion or change in the physical structure of the body, causing damage or harm thereto." K.S.A. 44-508(f). A compensable injury may only occur by accident, repetitive trauma (such as, for example, carpal tunnel syndrome) or occupational disease. K.S.A. 44-508(f)(1). For law enforcement officers, fire fighters and emergency medical service providers, the bill would permit compensation for post-traumatic stress disorder, without a requirement for a physical injury, that arises out of and in the course of employment or authorized service as a volunteer and is diagnosed by a licensed psychiatrist or psychologist. Section 1(b)(pg. 1); Section 2(f)(pg. 5).

Date of injury for PTSD

The bill provides the date of injury for post-traumatic stress disorder would be the earliest of the date the first responder:

- (1) Is taken off work by a licensed psychiatrist or licensed psychologist due to the diagnosed post-traumatic stress disorder;

- (2) is placed on modified or restricted duty by a licensed psychiatrist or licensed psychologist due to the diagnosed post-traumatic stress disorder;
- (3) is advised by a licensed psychiatrist or licensed psychologist that the diagnosed post-traumatic stress disorder is work-related; or
- (4) the last day worked or volunteered, unless, prior to the last day worked or volunteered, the first responder sought the attention of a physician, or a licensed psychologist, licensed psychiatrist or other mental healthcare professional licensed to practice psychology or mental health counseling, for a condition that was subsequently diagnosed as post-traumatic stress disorder by a licensed psychiatrist or licensed psychologist within three months of the last day worked or volunteered, the date of diagnosis is the date of injury. (Section 1, pg. 1)

This is similar to the current date-of-injury provisions for repetitive trauma, except that for post-traumatic stress disorder, the bill adds the three-month extension after the last day worked if the employee sought help for the condition prior to leaving employment. See K.S.A. 44-508(e); Section 2 of the bill, subsection (e).

Notice of injury requirements for PTSD

Current law provides notice of an injury by accident or repetitive trauma must be given to an employer the earliest of 20 calendar days from the date of the accident or the date of injury by repetitive trauma, 20 calendar days from the date medical treatment is sought or 10 calendar days after the employee's last day of actual work for the employer. K.S.A. 44-520. If notice is not provided within the deadlines, the claim is generally barred, except for certain circumstances.

In the case of post-traumatic stress disorder, the bill provides that notice must be given to the employer not later than 20 calendar days after the date of injury, as defined in the bill and discussed above.

Exception for use of alcohol or drugs for PTSD if claimant enters treatment or counseling

Under current law, K.S.A. 44-501(b)(1)(A) provides that an employer is not liable under the workers compensation act where the injury or disability was contributed to by the employee's use or consumption of alcohol or any drugs.

Under the bill, this provision would not bar a claim by a first responder where the first responder's use of alcohol or drugs is attributable to the condition diagnosed as post-traumatic stress disorder and the first responder enters into alcohol or substance abuse treatment or counseling ordered by the licensed psychiatrist or licensed psychologist who diagnosed the post-traumatic stress disorder.

Definition of injury amended to include PTSD

Section 2 of the bill amends K.S.A. 44-508, the definition section of the workers compensation law, to include post-traumatic stress disorder in the definition of “injury.”

If passed, the bill would become effective July 1, 2022.