

SENATE BILL REPORT

SB 5454

As of January 26, 2023

Title: An act relating to industrial insurance coverage for posttraumatic stress disorders affecting registered nurses.

Brief Description: Concerning industrial insurance coverage for posttraumatic stress disorders affecting registered nurses.

Sponsors: Senators Cleveland, Robinson, King, Keiser, Van De Wege, Conway, Kuderer, Liias, Nguyen, Shewmake, Stanford and Valdez.

Brief History:

Committee Activity: Labor & Commerce: 1/26/23.

Brief Summary of Bill

- Provides for a rebuttable presumption that posttraumatic stress disorder is an occupational disease under workers' compensation for direct care registered nurses.
- Allows the presumption to be rebutted by clear and convincing evidence.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

Background: Under the state's industrial insurance (workers' compensation) laws, a worker who, in the course of employment, is injured or suffers disability from an occupational disease, is entitled to certain benefits. An occupational disease is one that arises naturally and proximately out of employment.

The Department of Labor and Industries (L&I) was required to adopt a rule that claims based on mental conditions or mental disabilities caused by stress do not fall within the

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definition of occupational disease.

The L&I rule provides that these stress-caused mental conditions or disabilities claims do not fall within the definition of an occupational disease. Examples in the rule of mental conditions or mental disabilities caused by stress that do not fall within occupational disease include those conditions and disabilities resulting from:

- change of employment duties;
- conflicts with a supervisor;
- actual or perceived threat of loss of a job, demotion, or disciplinary action;
- relationships with supervisors, coworkers, or the public;
- specific or general job dissatisfaction;
- work load pressures;
- subjective perceptions of employment conditions or environment;
- loss of job or demotion for whatever reason;
- fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- objective or subjective stresses of employment;
- personnel decisions; or
- actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

Under this rule, stress resulting from exposure to a single traumatic event, such as actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury, may be considered an industrial injury. These exposures must occur in one of the following ways:

- directly experiencing the event;
- witnessing, in person, the event as it occurred to others; or
- extreme exposure to aversive details of the event.

Repeated exposure to traumatic events, none of which are a single traumatic event is not an industrial injury or an occupational disease. A single traumatic event that occurs within a series of exposures may be considered an industrial injury.

The rule adopted by L&I does not apply to occupational disease claims resulting from posttraumatic stress disorders of certain firefighters and law enforcement officers and public safety telecommunicators who receive calls for assistance and dispatch emergency services. For these firefighters and law enforcement officers hired after June 7, 2018, and public safety telecommunicators hired after June 11, 2020, exemption only applies if the firefighter or law enforcement officer or public safety telecommunicators, as a condition of employment, has submitted to a psychological examination administered by a Washington State licensed psychiatrist or psychologist that ruled out the presence of posttraumatic stress disorder from preemployment exposures. If the employer does not provide the psychological examination, the exemption applies.

Posttraumatic stress disorder is not considered an occupational disease if the disorder is

directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.

"Posttraumatic stress disorder" means a disorder that meets the diagnostic criteria for posttraumatic stress specified by the American psychiatric association in the diagnostic and statistics manual of mental disorders, fifth edition, or in a later edition as adopted by the department in rule.

There shall exist a prima facie presumption that posttraumatic stress disorder is an occupational disease for certain firefighters and law enforcement officers who are covered for workers' compensation. This presumption of occupational disease may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

The presumption is extended following termination of service for a period of three calendar months for each year of requisite service, but may not extend more than 60 months following the last date of employment.

The presumption only applies to active or former firefighters and law enforcement officers who have posttraumatic stress disorder that develops or manifests itself after the individual has served at least ten years.

Summary of Bill: The L&I rule that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease does not apply to occupational disease claims resulting from posttraumatic stress disorders of direct care registered nurses. Posttraumatic stress disorder is not considered an occupational disease if the disorder is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.

For direct care registered nurses covered under workers' compensation who are employed on a fully compensated basis, there is a prima facie presumption that posttraumatic stress disorder is an occupational disease. The presumption may be rebutted by clear and convincing evidence.

The presumption extends to a claimant following termination of employment for three calendar months for each year the claimant was a direct care registered nurse employed on a fully compensated basis, but may not extend more than 60 months following the last date of employment.

In a board of industrial insurance or court appeal, if the final decision allows the claim for benefits, the board or court must order that all reasonable costs of the appeal, including attorneys' fees and witness fees, be paid to the claimant by the opposing party. When reasonable costs of the appeal must be paid by L&I under this section in a state fund case, the costs must be paid from the accident fund and charged to the costs of the claim.

"Direct care registered nurse" means an individual licensed as a nurse who provides direct care to patients.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2024.

Staff Summary of Public Testimony: PRO: The bill recognizes and supports our nurses. We want to provide support and services for nurses, especially because of the trauma nurses experience because of COVID. This would recognize repeated traumatic events as an occupational disease. Nurses face several barriers to receiving mental health care, and this bill will remove them. Nurses are exposed to tremendous trauma that results in long-lasting, devastating effects. 33% of nurses working in the United State have experienced PTSD. Nurses experiencing PTSD tend to have shorter careers and have higher suicide rates.

This bill will provide care and support to nurses by recognizing them as first responders equal to law enforcement and firefighting officers. Nurses showed up for us during the pandemic, now it is time that the state shows up for them.

When the bill allowing a presumption for firefighters was passed, the argument was that we would see a mass exodus of firefighters claiming that their PTSD was too severe to continue to serve. That has not happened. Firefighters have gotten the treatment they need without the stigma. The only issue is that the barrier to access care is still too hard.

OTHER: The definition of "nurse" is too broad in the bill. Some nurses already receive sufficient workers compensation benefits depending on their specific duties.

Clear and convincing made sense during the pandemic but moving forward, we would like to see the preponderance of the evidence standard like for the firefighters. Clear and convincing is the standard for constitutional challenges. Is it really a rebuttable presumption when it has such a high standard?

Many of the sideboards in the firefighter were heavily negotiated. We would like the bill to conform to those standards. We would also like to see that it looks to reasonable ties to exposure that occurred on the job.

Persons Testifying: PRO: Senator Annette Cleveland, Prime Sponsor; AJ Johnson, Washington State Council of Fire Fighters; Anna Nepomuceno, NAMI Washington; Jackie

Wells, RN; Shawn Reed, RN, Washington State Nurses Association; Sarah Ghering, RN.

OTHER: Lisa Thatcher, Washington State Hospital Association; Bob Battles, Association of Washington Business (AWB); Kris Tefft, Washington Self-Insurers Association.

Persons Signed In To Testify But Not Testifying: No one.