



September 17, 2019

The Honorable Gavin Newsom
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: SB 542 (Stern): Workers' Compensation – *Request for Veto*

Dear Governor Newsom,

The California Coalition on Workers' Compensation, The California State Association of Counties, The California League of Cities, the American Property Casualty Insurance Association, The California Association of Joint Powers Authorities, CSAC Excess Insurance Authority, the California Special Districts Association, and the Urban Counties of California must respectfully **OPPOSE SB 542** which creates a new presumption of industrial causation for all mental health conditions or mental disabilities that result in a diagnosis of post-traumatic stress disorder, or mental health disorder that develops or manifests itself during a period when a firefighter or peace officer is in service of the department. While we agree that the August 13, 2019 amendments did improve the bill by limiting the scope and retroactive application, we still have foundational concerns about the bill.

Our members recognize that police officers and firefighters serve across our state with distinction in some of the most difficult circumstances imaginable. Our members include some of the largest employers of public safety officers in the state, and we have a healthy respect and admiration for people who choose every day to serve their communities. Fundamentally, we do not believe the SB 542 is necessary to give public safety officers, or any other California employee, fair access to the workers' compensation system for psychiatric injuries.

Current Law

While the workers' compensation system generally compensates work-related injuries so long as 1% of the injury is from workplace exposure, the legislature specifically created a separate standard for psychiatric injury that requires a worker to demonstrate by the preponderance of the evidence that the actual events of

employment were the predominant cause of the psychiatric injury. This is in recognition of the fact that people live complex lives and have many stressors in their lives outside of the workplace that impact their mental health.

SB 542 fundamentally changes how some psychiatric injuries will be treated under the law:

- Labor Code Section 3208.3(b)(1): This portion of current law states that “actual events of employment” must be “predominant as to all causes combined of the psychiatric injury”. In other words, the actual events of employment need to be at least 51% of the cause of a worker’s psychiatric condition. Does SB 542 create a presumption that this standard has been met, or does the bill functionally set this standard aside? And if the standard in 3208.3(b)(1) is being set aside, then to what standard must an employer seeking to rebut the presumption be held? Unfortunately, under SB 542 the law would seem to change in a way that allows covered peace officers and firefighters to access the workers’ compensation system for psychiatric injuries that are almost completely unrelated to employment.
- Labor Code 3208.3(e): This portion of current law creates a series of rules for how and when claims for psychiatric injury can be filed post-termination. These rules exist in statute to address very real public policy concerns that apply no less in the case of public safety personnel than they do for any other employee. SB 542 not only sets aside all these existing rules, but also goes farther by extending a very clear post-termination presumption.
- Labor Code Section 4660.1(c)(1): This portion of current law, which was enacted by SB 863 (De Leon, 2012), limits the permanent disability that can be associated with psychiatric injury that arises out of a physical injury. It is unclear how provisions in SB 542, specifically Section 3212.15(c), would interact with this existing labor code section.

Current law on psychiatric injuries is carefully crafted based on decades of experience in the workers’ compensation system, and some of the provisions of existing law that were designed specifically to fight fraud and unacceptable system behavior are potentially being set aside by SB 542.

Need and Cost Completely Unexamined

While the findings and declarations paint a clear picture of public safety officer exposure to extraordinarily stressful and dangerous situations, the findings do not speak in any way to the current functionality of the workers’ compensation system relative to the types of psychiatric claims in question. California’s workers’ compensation system is studied thoroughly on an annual basis, yet we are aware of no evidence that the workers’ compensation system is treating these types of claims unfairly.

The Department of Industrial Relations did an “Issue Brief” in 2018 in response to a letter from Assemblymember Timothy Grayson. Despite being asked specifically about denial rates for these types of claims, no data was reported that would indicate that public safety officer PTSD claims are being inappropriately denied. In fact, the conclusion of that report states:

“California’s MTUS treatment guidelines and medical evidence search sequence offer appropriate guidance for behavioral health disorders, including PTSD. Pursuant to Labor Code section 3208.3, all workers, including first responders, are covered by workers’ compensation insurance. The evidence shows that cases are underreported and associated stigma prevents care-seeking behavior in general (including first responders and veterans).” (DIR Issue Brief – Overview of the Behavioral Health of First Responders in California Using PTSD-Related Workers’ Compensation Claims Data – September 4, 2018)

Not only is there a lack of evidence that a presumption is needed, but there is also a lack of information about the cost associated with the changes. We believe the current workers' compensation system strikes the appropriate balance with respect to psychiatric injuries. Without evidence that a problem exists or an analysis of the potential costs to local entities, especially considering the retroactivity, we don't believe this legislation should be enacted.

For these reasons and more, we respectfully request that you veto SB 542.

Sincerely,



Faith Borges
Legislative Advocate
California Association of Joint Powers Authorities



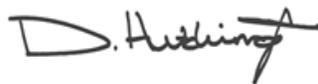
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