

April 1, 2019

The Honorable Henry Stern
California State Senate, 27th District
State Capitol, Room 5080
Sacramento, CA 95814

RE: SB 542 (Stern): Workers' Compensation
OPPOSE

Dear Senator Stern,

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** your **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 (PTSD) or manifests itself during a period when a firefighter or peace officer is in service of the department.

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.

It is unclear exactly how the proposed presumption in SB 542 would interact with the following existing California statutes:

- 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? If an employer could demonstrate that the actual events of work were only 15% of all causes of the psychiatric injury would that overcome the presumption?
- 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.

Retroactive Coverage Provisions

Workers’ compensation law is typically applied on a prospective basis, but SB 542 contains a provision making it retroactive to “claims for benefits filed or pending on or after January 1, 2017, including, but not limited to, claims for benefit files on or after that date that have previously been denied”. We must strenuously oppose any sort of retroactivity. Public agency budgets and their levels and layers of insurance coverage can not adjust retroactively to the type of exposure that would likely be created by SB 542. This provision would retroactively create liability for local governments, and they would have to set aside public funds to properly fund expected claims.

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)

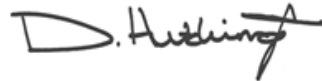
Not only is there a lack of evidence that a presumption is needed, but there is also a lack of information about the cost associated with the changes. We believe the current workers’ compensation system strikes the appropriate balance with respect to psychiatric injuries. Without evidence that a problem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

For these reasons and more, we respectfully **OPPOSE** your **SB 542**.

Sincerely,



Faith Borges
Legislative Advocate
California Association of Joint Powers Authorities



Dane Hutchings
Legislative Representative
League of California Cities



Josh Gauger
Legislative and Regulatory Representative
California State Association of Counties



Jean Hurst
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