

Workers' Compensation statutory changes creating a PTSD presumption for Police, Fire fighters and EMT's diagnosed by a mental health professional and incurred during service in the line of duty.

AND

New legal standard for determining whether any worker's mental injury/mental stress claim is compensable under the Workers' Compensation Act.

The Legislature amended the Vermont Workers' Compensation Act to make it easier for police, fire, and EMT workers to file a compensable PTSD claim, and amended the legal standard applied to other claims for mental injuries arising out of and in the course of employment for all workers.

Act No. 80 (2017) provides:

Sec. 23. 21 V.S.A. § 601 is amended to read:

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

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(11) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of that employment.

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- (I) (i) In the case of police officers, rescue or ambulance workers, or firefighters, post-traumatic stress disorder that is diagnosed by a mental health professional shall be presumed to have been incurred during service in the line of duty and shall be compensable, unless it is shown by a preponderance of the evidence that the post-traumatic stress disorder was caused by nonservice-connected risk factors or nonservice-connected exposure.
- (ii) A police officer, rescue or ambulance worker, or firefighter who is diagnosed with post-traumatic stress disorder within three years of the last active date of employment as a police officer, rescue or ambulance worker, or firefighter shall be eligible for benefits under this subdivision (11).
- (iii) As used in this subdivision (11)(I):
- (I) "Firefighter" means a firefighter as defined in 20 V.S.A. § 3151(3) and (4).
- (II) "Mental health professional" means a person with professional training, experience, and demonstrated competence in the treatment and diagnosis of mental conditions, who is certified or licensed to provide mental health care services and for whom diagnoses of mental conditions are within his or her scope of practice, including a physician, nurse with recognized psychiatric specialties, psychologist, clinical social worker, mental health counselor, or alcohol or drug abuse counselor.
- (III) "Police officer" means a law enforcement officer who has been certified by the Vermont Criminal Justice Training Council pursuant to 20 V.S.A. chapter 151.
- (IV) "Rescue or ambulance worker" means ambulance service, emergency medical personnel, first responder service, and volunteer personnel as defined in 24 V.S.A. § 2651.
- (J) (i) A mental condition resulting from a work-related event or work-related stress shall be considered a personal injury by accident arising out of and in the course of employment and be compensable if it is demonstrated by the preponderance of the evidence that:
- (I) the work-related event or work-related stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee across all occupations; and
- (II) the work-related event or work-related stress, and not some other event or source of stress, was the predominant cause of the mental condition.
- (ii) A mental condition shall not be considered a personal injury by accident arising out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer.