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State: Fla.

Proposed Rules Raise Many Questions on What Makes for PTSD: Top [2018-09-20]

Six months after the Florida Legislature deemed post-traumatic stress disorder a workplace injury, and just days before the law takes effect, state regulators are still grappling with the essence of the issue: What horrible scenes qualify a first responder for compensation?

The process may have opened a can of worms that could take a few years to fully resolve, stakeholders said Wednesday.

"I don't know where to begin on this," said Dr. Carolyn Stimel, executive director of the Florida Psychological Association. "They're saying that seeing someone with their brains exposed is traumatic, but seeing broken bones sticking out is not. I'm shaking my head."

Florida state officials, including Chief Financial Officer Jimmy Patronis, who oversees the Division of Workers' Compensation, pushed for the PTSD law this spring. Lawmakers passed Senate Bill 376 in March.



The law is set to take effect Oct. 1 and would allow workers' compensation benefits for first responders who have been traumatized by witnessing or treating gruesome injuries.

But the law requires the DWC to come up with rules that specify which injuries qualify "as grievous bodily harm of a nature that shocks the conscience." The division held one workshop with stakeholders in August and whittled down the types of trauma, from 18, to eight. On Oct. 4, the division will hold a follow-up workshop to discuss the categories further.

Stimel said members of the Psychological Association plan to attend and voice their concerns.

"It's almost like the state passed the law so they could feel good, but now they're narrowing it down so that no one qualifies," said Stimel, a psychologist who has worked with Florida law enforcement agencies for 20 years.

First-responder groups also plan to attend the workshop and have also raised questions about the limitations of the conscience-shocking terminology.

"It's a difficult task for the division," said Matt Puckett, executive director of the Florida Police Benevolent Association. "You can list the injuries, but what if you miss one?"

The latest version of the proposed rules lists the qualifying traumas: decapitation; degloving; enucleation; evisceration; exposure of the brain, heart, intestines, kidneys, liver or lungs; impalement; severance; and third-degree burns on 9% or more of the body.

But Stimel and Puckett said that leaves many more traumas that don't qualify.

"What about finding a tractor-trailer full of dead migrant workers?" Puckett asked. "Is that not shocking? What about seeing a child suffering from severe malnutrition and starvation?"

The meaning of the terms themselves have raised questions. Does "severance (full or partial)" mean that by seeing a finger with only the tip cut off, a first responder should receive time off and benefits? Does "enucleation" refer to the Wikipedia definition of removal of the eye from the socket, or does the word apply to the nucleus of cells or to other body parts?

Other states have run into similar complaints after laws were passed in an attempt to help first responders. In Texas, for example, the Legislature in 2005 approved a cancer-presumption law for firefighters. Almost 13 years later, claimants and municipalities are still arguing over what cancers can be presumed to be work-related.

The best approach, Stimel said, is to remove the seemingly arbitrary listing of what is compensable and what is not. Instead, the Florida law should simply allow first responders to be assessed by qualified mental health counselors, psychiatrists or psychologists. If the assessment determines that the officer is suffering from PTSD from witnessing traumatic scenes in the line of duty, he should qualify for compensation.

“Everyone’s emotional reaction will vary, and you can’t correlate it with the extent of an injury they might witness,” she said.

Puckett predicted that the multitude of questions raised about what constitutes a shocking scene will likely lead to revisions in the law in coming years. “This is one step in a multi-step process, I imagine,” he said.

If the Legislature decides to revise the types of traumas listed, that could also open up the law to other changes. Correctional officers, for example, were excluded from PTSD benefits legislation this year and plan to push for changes in the law, Puckett said.

The fact that the division has yet to finalize the rules before the law becomes effective also could open the door for potential litigation.

If a firefighter claims PTSD after Oct. 1 but before the division has determined which horrors qualify, for example, that means a workers’ compensation judge will have to use his discretion in making a ruling, said David Langham, Florida’s deputy chief workers’ Compensation judge.

“A lack of clarity means more litigation,” he said. “My judges will look to the rules as a guidepost, so they play a very important role.”

Despite the questions, Puckett said the division is moving in the right direction.

The workshop will be held at 9 a.m. Oct. 4 at the Hartman Building, Room 102, in Tallahassee. Information can be obtained by emailing Brittany.ONeil@myfloridacfo.com.

Also this week, the Division of Workers’ Compensation unveiled a new education program designed to help first responders ward off PTSD before and after a traumatic event occurs.

SB 376 requires municipal and other first-responder agencies to provide training for mental health awareness, prevention and treatment, and the division has posted documents that the agencies can use.

One is a chart that walks supervisors through activities to help meet goals, such as stabilization of emotionally distraught responders.

It’s not clear what the division based the documents on, or if medical professionals were involved. The division did not return phone calls and emails Wednesday.