

# OREGON TRIAL LAWYERS ASSOCIATION

319 SW Washington Street, #607

Portland, OR 97204

[www.oregontriallawyers.org](http://www.oregontriallawyers.org)

503-799-1017

## Testimony before the Management Labor Advisory Committee in Support of HB 2418 on behalf of the Oregon Trial Lawyers' Association

January 11, 2019

My name is Arthur Towers. I am the Political Director for the Oregon Trial Lawyers' Association. Thank you for the opportunity to provide this testimony in support of LC2820/HB 2418. As you know, our members are attorneys who fight for the rights of underdogs. In this instance, the underdogs are fire service workers and public safety workers who experience work-related Post-Traumatic Stress Disorder.

These are workers who provide an extremely valuable service to our community, and the work they do makes them highly susceptible to PTSD.

According to the Diagnostic and Statistical Manual of Mental Disorders, fifth edition (as quoted by the Court of Appeals), the following criterion addresses the type of event that can cause PTSD.

***“Criterion A: Stressor. The person was exposed to death, threatened death, actual or threatened serious injury or actual or threatened sexual violence as follows (one required): 1) Direct exposure. 2) Witnessing in person. 3) Indirectly, by learning that a close relative or close friend was exposed to trauma. If the event involved actual or threatened death, it must have been violent or accidental. 4) Repeated or extreme indirect exposure to aversive details of the event(s), usually in the course of professional duties (e.g., first responders, collecting body parts; professionals repeatedly exposed to details of child abuse). This does not include indirect non-professional exposure through electronic media, television, movies, or pictures.”***

Symptoms or behaviors (outlined in the remaining criteria) need to relate back to the post-traumatic event. Obviously, many workers in this field face the traumatic events described by the American Psychiatric Association. It is very reasonable to assume that, for workers in this group who exhibit the behaviors and symptoms of PTSD, a worksite event caused the disorder.

No worker who faces such emotional trauma on a regular basis should have to go through the entire gauntlet of the workers' comp system to prove a compensable claim.

This bill puts the burden of proof on the insurance company rather than the worker. This is very fair since mental health- and stress-related claims are extremely difficult to get accepted. In addition to the major cause standard applicable in all occupational diseases cases, workers bringing these claims must establish all four of these additional criteria (as stated in ORS 656.802(3)):

**(3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:**

**(a) The employment conditions producing the mental disorder exist in a real and objective sense.**

**(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.**

**(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.**

**(d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.**

These outdated criteria were adopted when we knew much less about mental illness and stress-related disorders than we do today.

Critics will point to **incomplete** data and claim this bill is a solution in search of a problem. They will erroneously infer that since very few PTSD claims are currently made; there is no need for this bill.

The data lacks an analysis of claims that go unfiled because proving legitimate claims is so difficult. Our members are on the ground talking face-to-face with workers who suffer from work-related stress. They report that many workers who suffer from this illness elect not to file a claim once they understand how difficult it will be to prove their case. It is already extremely difficult to win a mental stress case even with a perfectly clean record because of the heightened burden of causation, plus the four additional "hoops."

On top of that, there are workers who have this workplace-related disorder who don't file because of the stigma and shame that is still associated with mental illness.

**We urge the Management Labor Advisory Committee to support LC 2820/HB 2418.**