

Date prepared: January 30, 2019

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## HB 2418

### Brief summary

Presumes mental and emotional trauma and stress-related disorders are compensable workers' compensation claims for public safety personnel and certain employees of public and private safety agencies. The employer must show clear and convincing medical evidence that the cause of the condition is not at all related to performing duties within this employment. The bill applies to cities or counties that offer an alternative program for police and fire employees (e.g. the City of Portland).

### Analysis

#### What the law currently does

For a worker to have a successful workers' compensation claim (i.e. a compensable claim), the injury or disease must be work related. For certain types of conditions, the law states different requirements to prove the claim. Currently, if an employer is not providing their own disability or retirement system under ORS 656.027, the worker proves a mental disorder claim by showing:

1. **Major contributing cause:** Work was the major reason for the condition. This major contributing cause test weighs non-work factors and exclusions listed in statute against work-related factors. Only if the work-related factors are more than all the other factors combined is the claim compensable.
2. **Not generally inherent...:** The employment conditions producing the mental disorder are not generally inherent in every working situation and are not from reasonable discipline, corrective of job performance evaluations, termination, or other types of ordinary business decisions.
3. **Real and objective:** The employment conditions producing the mental disorder exist in a real and objective sense.
4. **Recognized diagnosis:** There is a diagnosis of a mental or emotional disorder that is generally recognized in the medical or psychological community.
5. **Work connection test:** There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.

Different standards exist for mental disorder claims that come as a consequence of another injury, or if the disorder is based on a preexisting disease that has worsened.

The law also contains a “presumption” for two types of claims by firefighters - heart/lung conditions and certain cancers. A presumption does not mean a claim is automatically accepted. Instead, a presumption shifts the burden from the worker to prove the claim *is* work related to requiring the employer/insurer to show the condition *is not* work related.

## What will change if the bill is enacted

**Creates a presumption for compensability/shifts the burden:** If a worker has performed work in one of the jobs listed below, any mental or emotional trauma or stress-related disorder that is generally recognized in the medical or psychological community will be presumed to be compensable. This shifts the burden of proof from the worker to the employer/insurer.

**Who is covered:** Correction officers; youth correction officers; parole and probation officers; police officers; certified reserve officers; reserve officers; emergency medical dispatchers; persons employed as an emergency communications worker; public safety dispatchers; employees of the Oregon Liquor Control Commission who act as regulatory specialists; fire service professionals; and employees of public or private safety agencies with job duties related to firefighting, police, ambulance, or emergency medical services. Volunteer firefighters and some volunteer peace officers are included in these definitions.

**Applicability:** The bill applies to all claims for benefits that occur or are pending on or after January 1, 2020. The bill also applies the presumption to an employer that provides their own disability or retirement system. Currently, this is just the City of Portland.

**Changes the burden of proof:** The employer may rebut the presumption only with clear and convincing medical evidence showing that the cause of the mental disorder is unrelated to performing duties as public safety personnel. This changes the threshold for compensability from more than 50 percent of the cause of the condition (major contributing cause), to related in any way to the condition.

**May expand the scope of what is compensable:** The proposal may expand what is deemed compensable for claims by this group of workers. Currently, a worker must have a “mental or emotional disorder” but this bill uses the term “mental or emotional trauma.” This could result in trauma being found compensable, even if it does not rise to the level of being diagnosed as a “disorder.”

## Likely impacts, results, or consequences if the bill is enacted

The number of compensable claims for mental or emotional trauma or stress-related disorders will likely increase, though it is not possible to quantify a precise number. DCBS data shows that in a recent 5-year period (from 2013 through 2017) there were 22 accepted claims and 46 denied claims for PTSD and stress related trauma disorders within protective service occupations. The City of Portland is not included in this data, but they reported that, for the same 5-year period (from 2013 through 2017) they had 4 accepted claims, 9 denied claims, and 5 withdrawn claims for stress and mental disorders. The impact of increased

claims will primarily fall on cities, counties, special districts, and the State of Oregon who are the primary employers of public safety personnel, however private employers will also be impacted.

The impact to DCBS would be seen in handling an increased number of disputes (medical, sanctions, reconsiderations, etc.) related to the change in the number of overall claims.

## **Questions/relevant information for the bill sponsor or primary proponent**

1. It appears the reference to “fire service professional” is duplicative. This group appears to be encompassed within the reference to “public safety personnel.” To further explain, proposed subsection (7)(a)(C) explains that “public safety personnel” has the meaning given that term in ORS 181A.355. ORS 181A.355(16) defines “public safety personnel” to include “fire service professionals.” But, Subsection (7) also refers to fire service professional and public safety personnel separately.
2. Proposed subsection (7) references “death, disability or impairment of health.” But, other parts of Chapter 656 reference the cause of the condition, and impairment which is due to the compensable injury. Will the reference to “death, disability or impairment of health” effect the analysis or the burden of proof for other types of benefits, such as temporary disability, permanent disability, or apportionment of permanent disability? If work contributes to death, disability or impairment of health, but not to the cause of the condition, is there an intent for that claim be compensable under the proposed presumption?
3. Proposed subsection (7)(b)(A) presumes compensability for “a mental or emotional trauma or a stress-related disorder.” Is it the intent of this bill to have the presumption apply to trauma which does not result in a diagnosable condition?
4. We are unclear on the intent of this bill for workers who otherwise qualify for the presumption, but also have a preexisting condition which contributes to their death, disability, or impairment of health. Can the insurer still deny or process the claim as a combined condition?
5. Would the presumption not apply if one of the factors outlined in ORS 656.802(7)(b)(B) or (C) is a small contributing factor to the cause of the mental or emotional trauma or stress-related disorder?
6. The language in proposed ORS 656.802(7)(b)(B) requires that the employment conditions that produce the condition arise out of performing duties within the qualifying employment. ORS 656.005(7)(a) requires that a compensable injury be “arising out of” and “in the course of” employment. Was it intentional to only refer to one part of this two part test in this section of the bill?

7. If a worker who is covered under this presumption previously had an unsuccessful claim for a mental disorder, can they file a new claim under the presumption for the trauma or a different condition, so long as they are not time barred from making the claim and the trauma/condition is not exactly what was previously denied?

## Legislative history

### Has this bill been introduced in a prior session?

No    Yes   Years   Bill numbers

### Does this bill amend current state or federal law or programs?

No    Yes   Specify: ORS chapter 656

### Is this bill related to a legal decision?

No    Yes   Case citation, AG opinion, date, etc.

### Should another DCBS division review this measure?

No    Yes   Divisions: Workers' Compensation Board

## Other impacts

### Does this bill have a fiscal impact to DCBS?

No    Yes    Unknown   Explain: The fiscal impact to DCBS would be seen by way of handling an increased number disputes related to compensable workers' compensation claims. It is expected existing staff can absorb this workload.

### Does this bill have an economic impact to stakeholders?

No    Yes    Unknown   Explain: This bill would result in an increased number of compensable workers' compensation claims and it may increase the overall costs of claims which fall under the presumption. The cost would be reflected in the insurance rates paid by employers for the categories of workers covered by the bill.

## Sponsors

House Interim Business and Labor Committee

## Possible interested stakeholders

Insurers, employers, labor organizations for impacted groups, attorneys

## Public policy topics

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| <input type="checkbox"/> Agency operations                  | <input type="checkbox"/> Other lines of insurance                |
| <input type="checkbox"/> Building codes                     | <input type="checkbox"/> Prescription drugs                      |
| <input type="checkbox"/> Financial institutions and lending | <input type="checkbox"/> Property and casualty insurance         |
| <input type="checkbox"/> Health insurance                   | <input type="checkbox"/> Public records/public meetings law      |
| <input type="checkbox"/> Involvement with other agencies    | <input type="checkbox"/> Rulemaking                              |
| <input type="checkbox"/> Licensure                          | <input type="checkbox"/> Securities                              |
| <input type="checkbox"/> Manufactured structures            | <input type="checkbox"/> Task force/reports                      |
| <input checked="" type="checkbox"/> MLAC legislative review | <input type="checkbox"/> Worker safety                           |
| <input type="checkbox"/> New program                        | <input checked="" type="checkbox"/> Workers' compensation system |
| <input type="checkbox"/> Nondepository programs             | <input type="checkbox"/> Other                                   |