



RESEARCH SUMMARY

March 28, 2019

To: MLAC Subcommittee on HB 2418/SB 507

From: Julia Hier, Claims Policy Analyst

Subject: Presumptions in other states

The following is a summary of other states which have presumptions related to mental health coverage. We are aware of presumptions in the following states: Maine, Minnesota, Vermont, and Washington. These presumptions are outlined in detail below.

We are also aware of an expanded law related to PTSD in Florida. Our understanding of this new law is also summarized below.

Maine – [MRS Title 3-A, Chapter 5](#), Section 201, 3-A

Effective 11/1/17 until 10/1/22, Maine added a post-traumatic stress disorder (PTSD) presumption. For the presumption to apply:

1. The worker must be a law enforcement officer, firefighter, or emergency medical services person
2. PTSD must be diagnosed as resulting from work stress
3. The diagnosis must be made by a licensed allopathic or osteopathic physician with a specialization in psychiatry or psychology
4. The work stress must be extraordinary and unusual compared with that experienced by the average employee
5. The work stress and not some other source of stress must be the predominant cause of the PTSD

The presumption may be rebutted by clear and convincing evidence to the contrary.

A mental injury is not considered to arise out of an in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer.

Minnesota – [Section 176.011](#), Subd. 15(d) and (e)

In Minnesota, “mental impairment” means a diagnosis of PTSD by a licensed psychiatrist or psychologist, and it refers to the condition described in the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.

Effective January 1, 2019, Minnesota added a presumption in their statute for PTSD. The details of the presumption are as follows:

1. The employee must be employed on active duty as one of the following:
 - a. A licensed police officer;
 - b. A firefighter;
 - c. A paramedic,
 - d. An emergency medical technician;
 - e. A licensed nurse employed to provide emergency medical services outside of a medical facility;
 - f. A public safety dispatcher;
 - g. An officer employed by the state or a political subdivision at a corrections, detention, or secure treatment facility;
 - h. A sheriff or full-time deputy sheriff of any county; or
 - i. A member of the Minnesota State Patrol
2. Preceding the date of disablement or death the employee is diagnosed with a mental impairment as defined in the paragraph above (i.e. diagnosed by a licensed psychiatrist or psychologist with PTSD, per the most recent DSM manual)
3. The employee has not been diagnosed with the mental impairment previously

The presumption may be rebutted by “substantial factors” brought by the employer or insurer. Substantial factors are not defined in the statute.

The mental impairment is not considered an occupational disease if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer.

Vermont – [Title 21, Chapter 9, Section 601](#), (11)(I)

Effective July 1, 2018, Vermont added a presumption in their statute for PTSD. The details of the presumption are as follows:

1. The employee is a police officer, rescue or ambulance worker, or firefighter, or within three years of diagnosis, was actively employed in one of these jobs. (These jobs are further defined in statute)
2. The employee is diagnosed with PTSD by a mental health professional (defined in statute)

The presumption may be rebutted by a preponderance of the evidence which shows the PTSD was caused by nonservice-connected risk factors or nonservice-connected exposure.

Washington – [RCW 51.08.140](#), [RCW 51.08.142](#), [RCW 51.08.165](#), [RCW 51.32.185](#)

Effective June 7, 2018, Washington added a presumption in their statute for PTSD. The details of the presumption are as follows:

1. The worker is a certain type of firefighter or law enforcement officer
2. The worker is diagnosed with PTSD which meets the diagnostic criteria for PTSD specified by the American psychiatric association in the diagnostic and statistics manual of mental disorders, fifth edition, or in a later edition as adopted by the department in rule
3. The PTSD develops or manifests itself after the individual has served at least ten years as that type of firefighter or law enforcement officer
4. The period to apply the presumption has not expired (the presumptions is extended to an applicable member following termination of service for a period of three calendar months for each year of requisite service, but may not extend more than sixty months following the last date of employment)
5. The firefighter or law enforcement officer, as a condition of employment, submitted to a psychological examination administered by a Washington licensed psychiatrist or psychologist who ruled out the presence of PTSD from pre-employment exposure – unless the employer does not provide the psychological exam and the employee otherwise meets the requirements for the presumption

If the worker meets the criteria above, it is assumed their PTSD is an occupational disease under RCW 51.08.140. That statute defines “occupational disease” as a disease or infection that arises naturally and proximately out of employment. The PTSD presumption may be rebutted by a preponderance of the evidence.

PTSD is not considered an occupational disease if the disorder is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.

Florida – [Florida Statute 112.1815](#)

Florida previously did not allow mental claims without physical injury. Effective October 1, 2018, Florida created an exception for first responders suffering from PTSD. The state allows PTSD to be covered for these workers, regardless of whether a physical injury is present, so long as

1. The worker is a “first responder”, which is defined as certain law enforcement officers, firefighters, and emergency medical technicians or paramedics
2. The worker is examined and diagnosed with PTSD by a licensed psychiatrist due to a list of specific events
3. The PTSD resulted from the first responder acting within the course of his or her employment
4. The diagnosis of PTSD is demonstrated by clear and convincing evidence