

PTSD Presumption Laws and Claims:

One Pool's Story



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Today's Agenda:

- ❖ How things "were" in Vermont
- ❖ The process of change
- ❖ Implementation and complications of the first PTSD Presumption legislation in the nation
- ❖ Lessons learned along the way
- ❖ What you can do



Vermont by the Numbers

- ▶ Total population: 626,299 (2018)
- ▶ EMS workers that VLCT-PACIF insures: 1,300
- ▶ Mental Health claims before 7/1/2017: 2-3/yr.
- ▶ Mental Health claims after 7/1/2017: 33 (13/yr.)

Increase: 433%



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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:

(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.

(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.

(I) (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

In Vermont, **psychological injuries (mental-mental) are covered and eligible for any/all benefits the same as physical injuries.**

Over the years, case law defined and clarified standards:

- ▶ Direct result from work exposures
- ▶ Objectively real stressor(s)
- ▶ Not resulting from hiring, firing, transfer of duties, reallocation of work force, or employment actions taken in good faith
- ▶ Extraordinary Stress (Crosby v. City of Burlington 1999)

“....resulted from extraordinarily stressful events compared to those typically encountered by other firefighters...”

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Nation's first PTSD presumption law:

- Passed to be effective July 1, 2017; Presumption is rebuttable
- Injury/exposure needs to occur in the line of duty
- Must be diagnosed by a mental health professional
- Applies to:
 - Police Officers
 - Rescue/Ambulance Workers
 - Firefighters
 - Volunteer Firefighters

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Vermont Statutes Title 21, Chapter 009, § 601:

- ❖ Limits the length of time an individual can make a claim
 - ❖ Must be diagnosed within **3 years of last active date of employment**
- ❖ Identifies who can diagnose PTSD for the presumption
 - ❖ Almost any medical provider qualifies, they only have to be a “mental health professional”
 - ❖ Can even be an alcohol or drug counselor



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Vermont Statutes Title 21, Chapter 009, § 601:

- ❖ Portions of the statute are vague and confusing
 - ❖ “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*”
- ❖ Case law provided further “clarification” that was likely not intended.....



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Bergeron v. City of Burlington (October 2018):

“...The legislation ... could not be clearer with respect to its effective date ...

It simply means that no claimants will be in a position to take advantage of the full three-year waiting period until at least July 1, 2020.”

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Workers' Compensation is not the right fit . . . for MANY reasons

- ▶ 21 days to make a decision – No going back
- ▶ HIPAA – Does it apply? Provider reluctance to share
- ▶ Confidentiality
- ▶ EAP – There are NO records?
- ▶ Past medical history – if relevant
- ▶ Subjective vs. Objective
- ▶ Claimant choice for treatment

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Workers' Compensation is not the right fit . . . for MANY reasons

- ▶ Recorded statement vs. interrogation
- ▶ Multiple employers with same presumption – Who pays?
- ▶ A path to retirement – with extra benefits
- ▶ Are YOUR adjusters trained to handle Mental Health claims? – a problem on both sides
- ▶ Costs – out of work based on subjectivity alone
- ▶ The gift that keeps on giving – expanding the Presumption for other work classes

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Most claims ARE made in good faith and for people truly seeking help!

... But **SOME** claims are another story:

- ▶ Chronic Employment Issues – Pending termination/retirement, only now feeling effects of PTSD from cumulative traumatic exposures spanning career
- ▶ Internal investigation and suit pending for alleged Use of Force – Stressors/trauma of having to use force caused him to be unable to work
- ▶ “My boss yelled at me . . .”
- ▶ EMT Not on duty, was not called to scene, and another department HAD responded, but chose to go to train vs. person call with fatality resulting



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Q: If you already have a presumption in your state – What can you do?

A: Make the best of it. Unless or until things change, do your best to manage your risk and exposure.

- Pre-emptive care for EMS workers
- Support and educate your members
- Help to get supports in place for timely post incident debriefing
- Encourage Chiefs to check in with their personnel
- “Check up from the Neck Up”
- First Responder Wellness Grant Program
- If things aren’t working – How can we help get things changed?

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Q: If Workers' Compensation Presumption statutes are being discussed in your state, what can you do?

A:

- Get informed.
- Get involved.
- Learn from what other states have done.
- Don't be the "Anti-Hero".
- Serve some cheese with your whine. Provide ideas and alternate solutions.

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If a PTSD presumption is not in your state yet...

...and it is not being discussed in your state...

...IT'S COMING TO YOUR STATE!

**Get ahead of things now while
you have time.**



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Questions?

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