

ASSEMBLY BILL NO. 492—ASSEMBLYMEN
BENITEZ-THOMPSON AND ROBERTS

MARCH 27, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing industrial insurance benefits. (BDR 53-709)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§ 1)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to industrial insurance; authorizing compensation under industrial insurance for posttraumatic stress disorder suffered by a first responder under certain circumstances; exempting a claim for posttraumatic stress disorder suffered by a first responder from certain provisions governing certain other stress-related claims; exempting a claim for posttraumatic stress disorder suffered by a first responder from certain prohibitions on compensation for an injury and temporary disability; exempting a claim for posttraumatic stress disorder suffered by a first responder from certain provisions governing the calculation of compensation for a permanent partial disability; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 1** of this bill provides that, under certain circumstances, posttraumatic
2 stress disorder suffered by a first responder is an occupational disease compensable
3 under industrial insurance. **Section 1:** (1) sets forth the circumstances under which
4 such a claim is compensable; (2) sets forth provisions governing the notice of such
5 an injury and the claim for compensation; (3) exempts such benefits from
6 apportionment due to preexisting posttraumatic stress disorder and limitations on
7 the duration of temporary benefits; (4) requires an agency which employs a first
8 responder to provide educational training on mental health issues; and (5) requires



the Division of Industrial Relations of the Department of Business and Industry to adopt certain regulations.

Existing law provides that a certain injury or disease sustained by an employee that is caused by stress is compensable under industrial insurance if it arose out of and in the course of his or her employment and sets forth the requirements for such a claim. (NRS 616C.180) **Section 2** of this bill exempts a claim for posttraumatic stress disorder suffered by a first responder from these requirements.

Existing law prohibits the payment of temporary compensation benefits for an injury or temporary total disability which does not incapacitate the employee for a minimum number of days. (NRS 616C.400, 617.420) **Sections 3 and 5** of this bill exempt a claim for posttraumatic stress disorder suffered by a first responder from these prohibitions.

Existing law prohibits the consideration of factors other than the degree of physical impairment of the whole person in calculating the entitlement to compensation for a permanent partial disability except in the case of certain claims for stress. (NRS 616C.490) **Section 4** of this bill exempts a claim for compensation for posttraumatic stress disorder suffered by a first responder from this prohibition.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

1. Posttraumatic stress disorder, as described in the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, suffered by a first responder is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS if:

(a) The posttraumatic stress disorder is demonstrated by clear and convincing evidence;

(b) The posttraumatic stress disorder resulted from the first responder acting within the course of his or her employment, except as otherwise provided in subsection 3; and

(c) The first responder is examined and subsequently diagnosed with such disorder by a licensed psychiatrist who is authorized as a treating physician pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS, or a psychologist who is licensed pursuant to chapter 641 of NRS, due to one or more of the following traumatic events:

(1) Seeing for oneself a deceased minor;

(2) Directly witnessing the death of a minor;

(3) Directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;



(4) Participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;

(5) Manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;

(6) Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience;

(7) Directly witnessing a death, including, without limitation, suicide, that involved grievous bodily harm of a nature that shocks the conscience;

(8) Directly witnessing a homicide, regardless of whether the homicide was criminal or excusable, including, without limitation, murder, mass killing as defined in 28 U.S.C. § 530C(b)(1)(m), manslaughter, self-defense, misadventure and negligence;

(9) Directly witnessing an injury, including, without limitation, an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;

(10) Participating in the physical treatment of an injury, including, without limitation, an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or

(11) Manually transporting a person who was injured, including, without limitation, by attempted suicide, and who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

2. Eligibility for benefits for a first responder pursuant to this section does not require a physical injury to the first responder.

3. For the purposes of paragraph (b) of subsection 1, a first responder is deemed not to be acting in the course of his or her employment if the first responder:

(a) Is off duty; or

(b) Is outside the jurisdiction of his or her employer.

4. The time for notice of injury or death in the case of a claim for compensation for posttraumatic stress disorder pursuant to this section is the same as that set forth in NRS 616C.015 or 617.342, as applicable, and is measured from one of the qualifying events listed in paragraph (c) of subsection 1 or the manifestation of the disorder, whichever is later.



5. A claim for compensation pursuant to this section must be properly filed pursuant to NRS 616C.020 or 617.344 not later than 52 weeks after the qualifying event or manifestation of the disorder.

6. Benefits for a first responder pursuant to this section are not subject to:

(a) Apportionment due to a preexisting posttraumatic stress disorder pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS; or

(b) Any limitation on the duration of temporary benefits pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS.

7. An agency which employs a first responder, including without limitation, a first responder who serves as a volunteer, shall provide educational training related to the awareness, prevention, mitigation and treatment of mental health issues.

8. The Division shall adopt regulations which specify the injuries that qualify as grievous bodily harm of a nature that shocks the conscience for the purposes of this section.

9. As used in this section:

(a) "Directly witnessing" means to see or hear for oneself.

(b) "Emergency medical attendant" means a person licensed as an attendant or certified as an emergency medical technician, advanced emergency medical technician or paramedic pursuant to chapter 450B of NRS, whose primary duties of employment are the provision of emergency medical services.

(c) "First responder" means:

(1) A salaried or volunteer firefighter;

(2) A police officer;

(3) An emergency medical attendant;

(4) An emergency dispatcher or call taker who is employed by a law enforcement or public safety agency in this State;

(5) A crime scene investigator who is employed by a law enforcement or public safety agency in this State;

(6) A forensic investigator who is employed by a law enforcement or public safety agency in this State; or

(7) A county coroner or medical examiner.

(d) "Manually transporting" means to perform physical labor to move the body of a wounded person for his or her safety or medical treatment.

Sec. 2. NRS 616C.180 is hereby amended to read as follows:

616C.180 1. Except as otherwise provided in this section, an injury or disease sustained by an employee that is caused by stress is compensable pursuant to the provisions of chapters 616A to 616D,



1 inclusive, or chapter 617 of NRS if it arose out of and in the course
2 of his or her employment.

3 2. Any ailment or disorder caused by any gradual mental
4 stimulus, and any death or disability ensuing therefrom, shall be
5 deemed not to be an injury or disease arising out of and in the
6 course of employment.

7 3. An injury or disease caused by stress shall be deemed to
8 arise out of and in the course of employment only if the employee
9 proves by clear and convincing medical or psychiatric evidence that:

10 (a) The employee has a mental injury caused by extreme stress
11 in time of danger;

12 (b) The primary cause of the injury was an event that arose out
13 of and during the course of his or her employment; and

14 (c) The stress was not caused by his or her layoff, the
15 termination of his or her employment or any disciplinary action
16 taken against him or her.

17 4. The provisions of this section do not apply to a person who
18 is claiming compensation pursuant to NRS 617.457 **H or section 1**
19 **of this act.**

20 **Sec. 3.** NRS 616C.400 is hereby amended to read as follows:

21 616C.400 1. Temporary compensation benefits must not be
22 paid under chapters 616A to 616D, inclusive, of NRS for an injury
23 which does not incapacitate the employee for at least 5 consecutive
24 days, or 5 cumulative days within a 20-day period, from earning full
25 wages, but if the incapacity extends for 5 or more consecutive days,
26 or 5 cumulative days within a 20-day period, compensation must
27 then be computed from the date of the injury.

28 2. The period prescribed in this section does not apply to:

29 (a) Accident benefits, whether they are furnished pursuant to
30 NRS 616C.255 or 616C.265, if the injured employee is otherwise
31 covered by the provisions of chapters 616A to 616D, inclusive, of
32 NRS and entitled to those benefits.

33 (b) Compensation paid to the injured employee pursuant to
34 subsection 1 of NRS 616C.477.

35 (c) A claim which is filed pursuant to NRS 617.453, 617.455 or
36 617.457 **H or section 1 of this act.**

37 **Sec. 4.** NRS 616C.490 is hereby amended to read as follows:

38 616C.490 1. Except as otherwise provided in NRS 616C.175,
39 every employee, in the employ of an employer within the provisions
40 of chapters 616A to 616D, inclusive, of NRS, who is injured by an
41 accident arising out of and in the course of employment is entitled to
42 receive the compensation provided for permanent partial disability.
43 As used in this section, “disability” and “impairment of the whole
44 person” are equivalent terms.



2. Within 30 days after receiving from a physician or chiropractor a report indicating that the injured employee may have suffered a permanent disability and is stable and ratable, the insurer shall schedule an appointment with the rating physician or chiropractor selected pursuant to this subsection to determine the extent of the employee's disability. Unless the insurer and the injured employee otherwise agree to a rating physician or chiropractor:

(a) The insurer shall select the rating physician or chiropractor from the list of qualified rating physicians and chiropractors designated by the Administrator, to determine the percentage of disability in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the Division pursuant to NRS 616C.110.

(b) Rating physicians and chiropractors must be selected in rotation from the list of qualified physicians and chiropractors designated by the Administrator, according to their area of specialization and the order in which their names appear on the list unless the next physician or chiropractor is currently an employee of the insurer making the selection, in which case the insurer must select the physician or chiropractor who is next on the list and who is not currently an employee of the insurer.

3. If an insurer contacts the treating physician or chiropractor to determine whether an injured employee has suffered a permanent disability, the insurer shall deliver to the treating physician or chiropractor that portion or a summary of that portion of the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted by the Division pursuant to NRS 616C.110 that is relevant to the type of injury incurred by the employee.

4. At the request of the insurer, the injured employee shall, before an evaluation by a rating physician or chiropractor is performed, notify the insurer of:

(a) Any previous evaluations performed to determine the extent of any of the employee's disabilities; and

(b) Any previous injury, disease or condition sustained by the employee which is relevant to the evaluation performed pursuant to this section.

➤ The notice must be on a form approved by the Administrator and provided to the injured employee by the insurer at the time of the insurer's request.

5. Unless the regulations adopted pursuant to NRS 616C.110 provide otherwise, a rating evaluation must include an evaluation of the loss of motion, sensation and strength of an injured employee if the injury is of a type that might have caused such a loss. Except in



the case of claims accepted pursuant to NRS 616C.180 ~~H~~ or section 1 of this act, no factors other than the degree of physical impairment of the whole person may be considered in calculating the entitlement to compensation for a permanent partial disability.

6. The rating physician or chiropractor shall provide the insurer with his or her evaluation of the injured employee. After receiving the evaluation, the insurer shall, within 14 days, provide the employee with a copy of the evaluation and notify the employee:

(a) Of the compensation to which the employee is entitled pursuant to this section; or

(b) That the employee is not entitled to benefits for permanent partial disability.

7. Each 1 percent of impairment of the whole person must be compensated by a monthly payment:

(a) Of 0.5 percent of the claimant's average monthly wage for injuries sustained before July 1, 1981;

(b) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after July 1, 1981, and before June 18, 1993;

(c) Of 0.54 percent of the claimant's average monthly wage for injuries sustained on or after June 18, 1993, and before January 1, 2000; and

(d) Of 0.6 percent of the claimant's average monthly wage for injuries sustained on or after January 1, 2000.

➤ Compensation must commence on the date of the injury or the day following the termination of temporary disability compensation, if any, whichever is later, and must continue on a monthly basis for 5 years or until the claimant is 70 years of age, whichever is later.

8. Compensation benefits may be paid annually to claimants who will be receiving less than \$100 a month.

9. Except as otherwise provided in subsection 10, if there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

10. If a rating evaluation was completed for a previous disability involving a condition, organ or anatomical structure that is identical to the condition, organ or anatomical structure being evaluated for the present disability, the percentage of disability for a subsequent injury must be determined by deducting the percentage of the previous disability from the percentage of the present disability, regardless of the edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted by the Division pursuant to NRS 616C.110 used to



determine the percentage of the previous disability. The compensation awarded for a permanent disability on a subsequent injury must be reduced only by the awarded or agreed upon percentage of disability actually received by the injured employee for the previous injury regardless of the percentage of the previous disability.

11. The Division may adopt schedules for rating permanent disabilities resulting from injuries sustained before July 1, 1973, and reasonable regulations to carry out the provisions of this section.

12. The increase in compensation and benefits effected by the amendment of this section is not retroactive for accidents which occurred before July 1, 1973.

13. This section does not entitle any person to double payments for the death of an employee and a continuation of payments for a permanent partial disability, or to a greater sum in the aggregate than if the injury had been fatal.

Sec. 5. NRS 617.420 is hereby amended to read as follows:

617.420 1. No compensation may be paid under this chapter for temporary total disability which does not incapacitate the employee for at least 5 cumulative days within a 20-day period from earning full wages, but if the incapacity extends for 5 or more days within a 20-day period, the compensation must then be computed from the date of disability.

2. The limitations in this section do not apply to medical benefits, including, without limitation, medical benefits pursuant to NRS 617.453, 617.455 or 617.457, *or section 1 of this act*, which must be paid from the date of application for payment of medical benefits.

Sec. 6. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 7. This act becomes effective upon passage and approval.

