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THIRD REPRINT

A.B. 492

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 (§ 2)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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

AN ACT relating to industrial insurance; revising the circumstances in which a first responder or an employee of the State or a local government is authorized to receive compensation under industrial insurance for certain stress-related claims; requiring an agency which employs a first responder or a volunteer first responder to provide certain educational training concerning mental health issues to the first responder; exempting a claim for certain stress-related injuries suffered by a first responder or an employee of the State or any of its agencies or political subdivisions from certain prohibitions on compensation for an injury and temporary disability; requiring the Administrator of the Division of Industrial Relations of the Department of Business and Industry to include concurrent wages of an injured employee in the calculation of average monthly wage under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law provides that, for the purposes of determining whether an injury or
- 2 disease caused by stress is compensable under industrial insurance, such an injury
- 3 is deemed to arise out of and in the course of employment only if the employee can
- 4 prove by clear and convincing medical or psychiatric evidence that the employee



has a mental injury caused by extreme stress in time of danger and that the primary cause of the mental injury was an event that arose out of and during the course of his or her employment. (NRS 616C.180) **Section 2** of this bill provides that a first responder may additionally prove by clear and convincing medical or psychiatric evidence that the mental injury was primarily caused by extreme stress due to the first responder directly witnessing a death or grievous injury, or the aftermath of a death or grievous injury, under certain circumstances during the course of his or her employment. **Section 2** of this bill also provides that an employee of the State or any of its agencies or political subdivisions may additionally prove by clear and convincing medical or psychiatric evidence that the mental injury was caused primarily by extreme stress due to the employee responding to a mass casualty incident during the course of his or her employment. Finally, **section 2** requires an agency which employs a first responder, including, without limitation, a first responder who is a volunteer, to provide educational training to the first responder on the awareness, prevention, mitigation and treatment of mental health issues.

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 claims for mental injury caused by extreme stress under the circumstances described by the amendatory provisions of **section 2** from these prohibitions.

Existing law provides that the amount of compensation for certain industrial injuries or death is based, in part, on the average monthly wage of the injured or deceased employee. (NRS 616C.440, 616C.475, 616C.490, 616C.505). Existing law requires the Administrator of the Division of Industrial Relations of the Department of Business and Industry to provide by regulation for a method of determining average monthly wage. (NRS 616C.420) **Section 3.5** of this bill requires the method for determining average monthly wage to include concurrent wages of the employee under certain circumstances.

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

Section 1. (Deleted by amendment.)

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

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

3. ~~[Am]~~ *Except as otherwise provided by subsections 4 and 5, an* injury or disease caused by stress shall be deemed to arise out of and in the course of employment only if the employee proves by clear and convincing medical or psychiatric evidence that:

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



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

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

4. *An injury or disease caused by stress shall be deemed to arise out of and in the course of employment, and shall not be deemed the result of gradual mental stimulus, if the employee is a first responder and proves by clear and convincing medical or psychiatric evidence that:*

(a) *The employee has a mental injury caused by extreme stress due to the employee directly witnessing:*

(1) *The death, or the aftermath of the death, of a person as a result of a violent event, including, without limitation, a homicide, suicide or mass casualty incident; or*

(2) *An injury, or the aftermath of an injury, that involves grievous bodily harm of a nature that shocks the conscience; and*

(b) *The primary cause of the mental injury was the employee witnessing an event described in paragraph (a) during the course of his or her employment.*

5. *An injury or disease caused by stress shall be deemed to arise out of and in the course of employment, and shall not be deemed the result of gradual mental stimulus, if the employee is employed by the State or any of its agencies or political subdivisions and proves by clear and convincing medical or psychiatric evidence that:*

(a) *The employee has a mental injury caused by extreme stress due to the employee responding to a mass casualty incident; and*

(b) *The primary cause of the injury was the employee responding to the mass casualty incident during the course of his or her employment.*

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

7. The provisions of this section do not apply to a person who is claiming compensation pursuant to NRS 617.457.

8. *As used in this section:*

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

(b) *"First responder" means:*

(1) *A salaried or volunteer firefighter;*

(2) *A police officer;*

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



(4) An emergency medical technician or paramedic who is employed by a public safety agency in this State.

(c) "Mass casualty incident" means an event that, for the purposes of emergency response or operations, is designated as a mass casualty incident by one or more governmental agencies that are responsible for public safety or for emergency response.

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

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

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

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

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

(c) A claim which is filed pursuant to NRS 617.453, 617.455 or 617.457.

(d) A claim to which subsection 4 or 5 of NRS 616C.180 applies.

Sec. 3.5. NRS 616C.420 is hereby amended to read as follows:

616C.420 1. The Administrator shall provide by regulation for a method of determining average monthly wage.

2. In determining average monthly wage pursuant to subsection 1, the method must include concurrent wages of the injured employee only if the concurrent wages are earned from one or more employers who are insured for workers' compensation or government disability benefits by:

(a) A private carrier;

(b) A plan of self-insurance;

(c) A workers' compensation insurance system operating under the laws of any other state or territory of the United States; or

(d) A workers' compensation or disability benefit plan provided for and administered by the Federal Government or any agency thereof.

3. Except as otherwise provided by subsection 2, concurrent wages include, without limitation, wages earned from:

(a) Active or reserve duty with or in:



(1) *The Army, Navy, Air Force, Marine Corps or Coast Guard of the United States;*

(2) *The Merchant Marine; or*

(3) *The National Guard; or*

(b) *Employment by:*

(1) *The Federal Government or any branch or agency thereof;*

(2) *A state, territorial, county, municipal or local government of any state or territory of the United States; or*

(3) *A private employer, whether that employment is full-time, part-time, temporary, periodic, seasonal or otherwise limited in term, or pursuant to contract.*

4. *As used in this section, "concurrent wages" means the sum of wages earned or deemed to have been earned at each place of employment, including, without limitation, the sum of any and all money earned for work of any kind or nature performed by an employee for two or more employers during the one-year period immediately preceding the date of injury or the onset of occupational disease, whether measured by an hourly rate, salary, piecework, commissions, gratuities, bonuses, per diem, value of meals, value of housing or any other employment benefit that can be fairly calculated to a monetary value expressed in an average monthly amount.*

Sec. 4. (Deleted by amendment.)

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 a claim to which subsection 4 or 5 of NRS 616C.180 applies*, which must be paid from the date of application for payment of medical benefits.

Sec. 5.5. The amendatory provisions of section 3.5 of this act apply prospectively with regard to any claim pursuant to chapters 616A to 616D, inclusive, or 617 of NRS which is open on or filed on or after July 1, 2019.

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. 1. This section and sections 2, 3, 5 and 6 of this act become effective upon passage and approval.



1 2. Sections 3.5 and 5.5 of this act become effective on July 1,
2 2019.

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