STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2398
By: Hays

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85A O.S. 2021, Section 13, which relates to certain injuries related to mental health; providing for computation of benefits for certain persons; providing for temporary pension benefits; imposing limit on total period for disability benefits; providing for award of permanent total disability based upon maximum medical improvement; providing for payment of benefits based on certain injury; imposing time limit on benefits; imposing limit on employer responsibility for prescription medicine; defining terms; providing for transfer of payment for claims or increased premiums incurred by cities or towns; prescribing procedures; providing for terminology in official publications; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 85A O.S. 2021, Section 13, is amended to read as follows:

Section 13. A. 1. A mental injury or illness is not a compensable injury unless caused by a physical injury to the employee, and shall not be considered an injury arising out of and in the course and scope of employment or compensable unless
demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence or to a law enforcement officer, firefighter, or emergency medical technician on a full-time basis by a municipality, county, or the State of Oklahoma, or a volunteer firefighter who suffers post-traumatic stress disorder, as defined herein, while responding to an emergency. For the purpose of this section, such employee shall be referred to as a first responder.

2. No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

B. 1. Notwithstanding any other provision of this act, where a claim is for mental injury or illness, the employee shall be limited to twenty-six (26) weeks of disability benefits unless it is shown by clear and convincing evidence that benefits should continue for a set period of time, not to exceed a total of fifty-two (52) weeks. If the treating physician is of the opinion that the first responder is temporarily unable to perform his or her job or any alternative work offered by the employer, he or she shall be entitled to receive compensation which is the greater of the weekly benefit provided for in a collective bargaining agreement or according to the policy of the employer, or seventy percent (70%) of the injured employee's
average weekly wage not to exceed the state average weekly wage. If the employee has a temporary pension benefit available at no additional cost to the employee and the benefit is equal to or greater than the temporary award in this system the employer may elect to exercise the temporary pension benefit. In no event shall disability benefits extend beyond fifty-two (52) weeks.

2. Notwithstanding any other provision of this section, a person who receives benefits provided herein for a mental injury or illness not caused by a physical injury who, after reaching maximum medical improvement, is unable to perform the essential functions of their employment position and who is not eligible to receive a disability retirement through their pension or retirement system shall be eligible to be awarded permanent disability benefits as provided for in this act.

3. a. In cases where death results directly from the mental injury or illness within a period of one (1) year, compensation shall be paid the dependents as provided in other death cases under this act.

b. Death directly or indirectly related to the mental injury or illness occurring one (1) year or more from the incident resulting in the mental injury or illness shall not be a compensable injury.

C. 1. In the event the Workers' Compensation Commission finds that a first responder has suffered post-traumatic stress disorder
not accompanied by a physical injury, as defined herein, the
employer shall provide reasonable and necessary medical treatment
for such injury, subject to the Oklahoma Workers' Compensation Fee
Schedule, for a period of no longer than one (1) year. The employer
shall not be responsible for medical treatment in the form of
prescription medicine in excess of Ten Thousand Dollars
($10,000.00).

2. During any period in which a first responder is temporarily
unable to perform his or her job, the employer shall pay to maintain
health insurance coverage for the first responder, if such health
insurance was in effect on the date of the injury.

D. "Post-traumatic stress disorder", for the purpose of this
section, means an injury or condition in which a first responder has
been exposed to a traumatic event and:

1. Has experienced, witnessed, or was confronted with an event
that involved actual or threatened death or serious injury, or a
threat to the physical integrity of others, and the response
involved fear, helplessness, or horror;

2. The traumatic event is persistently re-experienced in one or
more of the following ways:

   a. recurrent and intrusive distressing recollections of
      the event,

   b. recurrent distressing dreams,
c. acting or feeling as if the traumatic event were
   recurring,

d. intense psychological distress at exposure to cues
   that symbolize an aspect of the traumatic event, or

e. physiological reactivity on exposure to cues that
   symbolize an aspect of the traumatic event;

3. Persistent avoidance of stimuli associated with the trauma
   and numbing of general responsiveness such as efforts to avoid
   thoughts, feelings or conversations associated with the trauma,
   markedly diminished interest or participation in significant
   activities, or a feeling of detachment or estrangement from others;

4. Persistent symptoms of increased arousal such as difficulty
   falling or staying asleep, irritability or outbursts of anger,
   difficulty concentrating, or hypervigilance;

5. The duration of the disturbance is more than one (1) month;

   and

6. The disturbance causes clinically significant distress or
   impairment in social, occupational and other important areas of
   functioning.

E. "Volunteer firefighter", for the purpose of this section,
   means a person who is enrolled as a member of a volunteer fire
   department with two or less salaried firefighters and who serves in
   such capacity without receiving a regular salary.
F. "Emergency medical technician", for the purpose of this section, means a person who holds a license as an emergency medical technician, an intermediate or advanced emergency medical technician, or a paramedic, such license issued by the State Department of Health to perform emergency medical services in accordance with the Oklahoma Emergency Response Systems Development Act and the rules and standards promulgated by the State Commissioner of Health.

G. Any city or town in this state that incurs a claim relating to post-traumatic stress disorder may, at the city or town's option, transfer the payment of all or any portion of the claim or increased workers' compensation premiums to the judgment rolls of the geographic area or areas serviced by the department of the injured worker, including any unincorporated areas serviced by the department, and shall be listed on official publications as "First Responder PTSD".

SECTION 2. This act shall become effective November 1, 2023.