



MEMORANDUM

Agenda Item #: 7
Meeting Date: June, 11, 2019

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

THRU: CAROLYNN PETRU, INTERIM CITY MANAGER/s/

FROM: KARINA BAÑALES, ASSISTANT TO THE CITY MANAGER /s/

SUBJECT: AFFIRMATION OF OPPOSITION TO SENATE BILL 542 (STERN) –
WORKERS’ COMPENSATION POST TRAUMATIC STRESS DISORDER
PRESUMPTION

DATE: JUNE 11, 2019

ISSUE

Shall the City Council authorize the Mayor to sign and the staff to send the attached letter opposing Senate Bill 542 (SB 542) that creates retroactive coverage provisions for presumptive mental health conditions or mental disabilities that result in a diagnosis of post-traumatic stress or mental health disorder that develops (PTSD) or manifests itself during a period when a firefighter or police officer is in service of the department?

BACKGROUND

Every year, as bills are introduced by members of the State legislature, the City frequently relies on the League of California Cities (League) to advocate on behalf of the City’s interests. As a result, when suggested by the League, the City expresses its position on bills, joining the League and other member cities in support or opposition of proposed legislation that impacts the delivery of municipal services to Palos Verdes Estates residents.

DISCUSSION/ANALYSIS

While the workers' compensation system generally compensates work-related injuries so long as 1% of the injury is from workplace exposure, the current law specifically contains a separate standard for psychiatric injury that requires a worker to demonstrate by the preponderance of the evidence that the actual events of employment were the predominant cause of the psychiatric injury. This is in recognition of the fact that people live complex lives and have many stressors in their lives outside of the workplace that affect their mental health.

SB 542, as currently proposed by Senator Stern, would change the standard for psychiatric injury significantly and introduce a retroactive provision not found in the current law. SB 542 would impact municipalities with their own Fire and Police departments in the following ways:

- Creates a new presumption for all mental health conditions or mental disabilities that result in a diagnosis of post-traumatic stress or mental health disorder that develops (PTSD) or manifests itself during a period when a firefighter or peace officer is in service of the department.
- Creates retroactive coverage provisions even if a claim has been denied. Workers' compensation law is typically applied on a prospective basis, but SB 542 contains a provision making it retroactive to "claims for benefits filed or pending on or after January 1, 2017."

As a result, the League is requesting the City the Palos Verdes Estates to support their campaign in opposing the retroactivity provisions in SB 542. Below are the major issues with SB 542:

- City budgets and their levels and layers of insurance coverage cannot adjust retroactively to the type of exposure that would likely be created by SB 542. This provision would retroactively create liability for local governments, and they would have to set aside public funds to properly fund expected claims.
- Not only is there a lack of evidence that a presumption is needed, but there is also a lack of information about the cost associated with the changes.
- This measure would upend a balanced workers' compensation system. California's workers' compensation system is studied thoroughly on an annual basis. There no evidence that the workers' compensation system is treating psychiatric injury claims unfairly.
- Current law on psychiatric injuries is carefully crafted based on decades of experience in the workers' compensation system, and some of the provisions of existing law that were designed specifically to fight fraud and unacceptable system behavior are potentially being set aside by SB 542.

FISCAL IMPACT

There is no fiscal impact directly associated with this report.

ALTERNATIVES

1. Authorize the Mayor to sign and the staff to send a letter opposing SB542
2. Request further information.
3. Provide alternative direction.
4. Take no action.

CONCLUSIONS AND RECOMMENDATIONS

Senate Bill 542 (SB 542) creates retroactive coverage provisions for presumptive mental health conditions or mental disabilities that result in a diagnosis of post-traumatic stress or mental health disorder that develops (PTSD) or manifests itself during a period when a firefighter or police officer is in service of the department. While the City has recognized the importance of addressing Workers' Compensation issues associated with workplace injury, SB 542 may impact the City's existing Workers' Compensation claims and those that may resurface from as far back as January 1, 2017.

It is recommended that the City Council go on record opposing Senate Bill 542 (SB 542) and authorize the Mayor to sign a letter of opposition and authorize staff to disseminate it to all appropriate parties.

NOTIFICATION

The agenda for this meeting and for this item have been posted in the customary locations and in compliance with the Municipal Code.

ATTACHMENTS

- A - Senate Bill 542 (Stern) – Workers' Compensation PTSD Presumption
- B – Letter to Assembly member Daly Opposing Senate Bill 542
- C - April 4, 2019 League of California Cities Letter to Senator Stern Opposing SB 542

Introduced by Senator Stern

February 22, 2019

An act to add Section 3212.15 to the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 542, as introduced, Stern. Workers' compensation.

Under existing law, a person injured in the course of employment is generally entitled to receive workers' compensation on account of that injury. Existing law provides that, in the case of certain state and local firefighting personnel and peace officers, the term "injury" includes various medical conditions that are developed or manifested during a period while the member is in the service of the department or unit, and establishes a disputable presumption in this regard.

This bill would provide that in the case of certain state and local firefighting personnel and peace officers, the term "injury" also includes a mental health condition or mental disability that results in a diagnosis of post-traumatic stress or mental health disorder that develops or manifests itself during a period in which the firefighting member or peace officer is in the service of the department or unit. These provisions would apply to claims for benefits filed or pending on or after January 1, 2017.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:

1 (1) Firefighting and law enforcement are recognized as two of
2 the most stressful occupations. Only our nation’s combat soldiers
3 endure more stress. Similar to military personnel, California’s
4 firefighters and law enforcement personnel face unique and
5 uniquely dangerous risks in their sworn mission to keep the public
6 safe. They rely on each other for survival while placing their lives
7 on the line every day to protect the communities they serve.

8 (2) Firefighters and law enforcement personnel routinely respond
9 to traumatic incidents and dangerous circumstances, including,
10 but not limited to, fires, stabbings, gun battles and shootings,
11 including active shooter incidents, domestic violence, terrorist
12 acts, riots, automobile accidents, airplane crashes, earthquakes,
13 and other gruesome scenes.

14 (3) On any given shift, firefighters and law enforcement
15 personnel can be called on to make life and death decisions, witness
16 a young child dying with their grief-stricken family, or be exposed
17 to a myriad of communicable diseases and known carcinogens.
18 Firefighters and law enforcement personal are constantly at
19 significant risk of bodily harm or physical assault while they
20 perform their duties.

21 (4) Constant, cumulative exposure to these horrific events make
22 firefighters and law enforcement personnel uniquely susceptible
23 to the emotional and behavioral impacts of job-related stressors.
24 This is especially evident given that the nature of the job often
25 calls for lengthy separation from their families due to a long shift
26 or wildfire strike team response.

27 (5) Today, a firefighter’s and law enforcement officer’s
28 occupational stress is heightened in the face of California’s “new
29 normal” in which wildland and wildland-urban interface fires
30 continue to annually increase as hot, dry, and wind-whipped
31 conditions persist.

32 (6) For firefighters, California’s year-round fire seasons and
33 climatic factors are conducive to large-scale, devastating fire
34 events. In 2018, the Carr Fire produced a fire tornado that reached
35 speeds of 143 miles per hour and caused a cataclysmic path of
36 destruction in Redding, where 2 firefighters were among the 7
37 people who lost their lives.

38 (7) Last year’s fire storms were a brutal reminder of the ferocity
39 of wildfires and how all too often on-duty firefighters and law
40 enforcement officers incur the stress of witnessing victims flee

1 while worrying about whether their own homes, and the safety of
2 their families and neighbors, are threatened. When on duty,
3 firefighters and law enforcement officers endure the added pain
4 of driving through wreckage, seeing destroyed homes, or worse,
5 the skeletal remains of family, friends, and neighbors burned to
6 ash while not being able to stop to provide assistance or comfort.

7 (8) While the cumulative impacts of these aggressive, deadly
8 events are taking their toll, our firefighters and law enforcement
9 officers continue to stand up to human-caused devastation and
10 nature’s fury, but they are physically and emotionally exhausted.

11 (9) Despite the job-related dangers and stressors, the call to
12 respond is simple for many public safety personnel. It’s their job.
13 But a high-stress working environment can take an overwhelming
14 mental, emotional, and physical toll as chronic exposure to
15 traumatic events and critical incidents increases the risk for
16 post-traumatic stress and other stress-induced injuries.

17 (10) While most firefighters and law enforcement officers
18 survive the traumas of their job, sadly, many experience the impacts
19 of occupational stressors when off duty. The psychological and
20 emotional stress of their profession can have a detrimental impact
21 long after their shift is over.

22 (11) Trauma-related injuries can become overwhelming and
23 manifest in post-traumatic stress, which may result in substance
24 use disorders and even, tragically, suicide. The fire service is four
25 times more likely to experience a suicide than a work-related death
26 in the line of duty in any year.

27 (12) California has a responsibility to ensure that its fire and
28 law enforcement agencies are equipped with the tools necessary
29 to assist their personnel in mitigating the occupational stress
30 experienced as a result of performing their job duties and protecting
31 the public.

32 (b) It is, therefore, the intent of the Legislature to enact
33 legislation recognizing the hazards and resulting trauma of these
34 occupations and provide treatment and support for these public
35 servants through presumptive care to our firefighters and law
36 enforcement officers.

37 SEC. 2. Section 3212.15 is added to the Labor Code,
38 immediately following Section 3212.1, to read:

39 3212.15. (a) This section applies to all of the following:

- 1 (1) Active firefighting members, whether volunteers, partly
- 2 paid, or fully paid, of all of the following fire departments:
- 3 (A) A fire department of a city, county, city and county, district,
- 4 or other public or municipal corporation or political subdivision.
- 5 (B) A fire department of the University of California and the
- 6 California State University.
- 7 (C) The Department of Forestry and Fire Protection.
- 8 (D) A county forestry or firefighting department or unit.
- 9 (2) Active firefighting members of a fire department that serves
- 10 a United States Department of Defense installation and who are
- 11 certified by the Department of Defense as meeting its standards
- 12 for firefighters.
- 13 (3) Active firefighting members of a fire department that serves
- 14 a National Aeronautics and Space Administration installation and
- 15 who adhere to training standards established in accordance with
- 16 Article 4 (commencing with Section 13155) of Chapter 1 of Part
- 17 2 of Division 12 of the Health and Safety Code.
- 18 (4) Peace officers, as defined in Section 830.1, subdivision (a),
- 19 (b), and (c) of Section 830.2, Section 830.32, subdivisions (a) and
- 20 (b) of Section 830.37, Sections 830.5 and 830.55 of the Penal
- 21 Code, who are primarily engaged in active law enforcement
- 22 activities.
- 23 (5) (A) Fire and rescue services coordinators who work for the
- 24 Office of Emergency Services.
- 25 (B) For purposes of this paragraph, “fire and rescue services
- 26 coordinators” means coordinators with any of the following job
- 27 classifications: coordinator, senior coordinator, or chief
- 28 coordinator.
- 29 (b) The term “injury,” as used in this division, includes a mental
- 30 health condition or mental disability that results in a diagnosis of
- 31 post-traumatic stress or mental health disorder that develops or
- 32 manifests itself during a period in which any member described
- 33 in subdivision (a) is in the service of the department or unit.
- 34 (c) The compensation that is awarded for post-traumatic stress
- 35 or mental health disorder shall include full hospital, surgical,
- 36 medical treatment, disability indemnity, and death benefits, as
- 37 provided by this division.
- 38 (d) The post-traumatic stress or mental health disorder so
- 39 developing or manifesting itself in these cases shall be presumed
- 40 to arise out of and in the course of the employment. This

1 presumption is disputable and may be controverted by other
2 evidence, but unless so controverted, the appeals board is bound
3 to find in accordance with the presumption. This presumption shall
4 be extended to a member following termination of service for a
5 period of 3 calendar months for each full year of the requisite
6 service, but not to exceed 60 months in any circumstance,
7 commencing with the last date actually worked in the specified
8 capacity.

9 (e) The act adding this section enacted during the 2019 portion
10 of the 2019–20 Regular Session shall be applied to claims for
11 benefits filed or pending on or after January 1, 2017, including,
12 but not limited to, claims for benefits filed on or after that date
13 that have previously been denied, or that are being appealed
14 following denial.

15 (f) For the purposes of this section, a “mental health condition
16 or mental disability” means a post-traumatic stress disorder or
17 mental health disorder as described in the most recent edition of
18 the Diagnostic and Statistical Manual of Mental Disorders
19 published by the American Psychiatric Association.

O



CITY OF

Palos Verdes Estates

Attachment B

CALIFORNIA

June 11, 2019

The Honorable Tom Daly
Chair, Assembly Insurance Committee
State Capitol Building, Room 3120
Sacramento, CA 95814

RE: **SB 542 (Stern) Workers' compensation.
Notice of Opposition**

Dear Assembly Member Daly,

The City of Palos Verdes Estates must respectfully oppose SB 542, which would create a new presumption of industrial causation for all mental health conditions or mental disabilities that result in a diagnosis of post-traumatic stress disorder (PTSD), or mental health disorder that develops or manifests itself during a period when a firefighter or peace officer is in service of the department.

While the City of Palos Verdes Estates recognizes that police officers and firefighters serve across our state with distinction in some of the most difficult circumstances imaginable, we do not believe SB 542 is necessary to give public safety officers, or any other California employee, fair access to the workers' compensation system for psychiatric injuries.

The California's workers' compensation system is studied thoroughly on an annual basis, yet we are aware of no evidence that the workers' compensation system is treating these types of claims unfairly. The Department of Industrial Relations did an "Issue Brief" in 2018 in response to a letter from Assembly Member Timothy Grayson. Despite being asked specifically about denial rates for these types of claims, no data was reported that would indicate that public safety officer PTSD claims are being inappropriately denied.

We believe the current workers' compensation system strikes the appropriate balance with respect to psychiatric injuries. We have a healthy respect and admiration for people who choose every day to serve their communities. However, without evidence that a problem exists or an analysis of the potential costs to local entities, especially considering the retroactivity, we do not believe this legislation should be advanced.

For these reasons, the City of Palos Verdes Estates opposes SB 542 (Stern).

Sincerely,

Kenneth K. Kao
Mayor
City of Palos Verdes Estates

cc: The Honorable Henry Stern
Senator Ben Allen & Assembly Member Al Muratsuchi
Your League Regional Public Affairs Manager (via email)
League of California Cities, cityletters@cacities.org
Che Salinas, Chief Deputy Legislative Secretary for Operations, Office of Governor Newsom



April 1, 2019

The Honorable Henry Stern
California State Senate, 27th District
State Capitol, Room 5080
Sacramento, CA 95814

RE: SB 542 (Stern): Workers' Compensation
OPPOSE

Dear Senator Stern,

The California Coalition on Workers' Compensation, The California State Association of Counties, The California League of Cities, the American Property Casualty Insurance Association, The California Association of Joint Powers Authorities, CSAC Excess Insurance Authority, the California Special Districts Association, and the Urban Counties of California must respectfully **OPPOSE** your **SB 542**, which creates a new presumption of industrial causation for all mental health conditions or mental disabilities that result in a diagnosis of post-traumatic stress disorder, or mental health disorder that develops (PTSD) or manifests itself during a period when a firefighter or peace officer is in service of the department.

Our members recognize that police officers and firefighters serve across our state with distinction in some of the most difficult circumstances imaginable. Our members include some of the largest employers of public safety officers in the state, and we have a healthy respect and admiration for people who choose every day to serve their communities. Fundamentally, we do not believe the SB 542 is necessary to give public safety officers, or any other California employee, fair access to the workers' compensation system for psychiatric injuries.

Current Law

While the workers' compensation system generally compensates work-related injuries so long as 1% of the injury is from workplace exposure, the legislature specifically created a separate standard for psychiatric injury that requires a worker to demonstrate by the preponderance of the evidence that the actual events of employment were the predominant cause of the psychiatric injury. This is in recognition of the fact that people live complex lives and have many stressors in their lives outside of the workplace that impact their mental health.

It is unclear exactly how the proposed presumption in SB 542 would interact with the following existing California statutes:

- Labor Code Section 3208.3(b)(1): This portion of current law states that “actual events of employment” must be “predominant as to all causes combined of the psychiatric injury”. In other words, the actual events of employment need to be at least 51% of the cause of a worker’s psychiatric condition. Does SB 542 create a presumption that this standard has been met, or does the bill functionally set this standard aside? And if the standard in 3208.3(b)(1) is being set aside, then to what standard must an employer seeking to rebut the presumption be held? If an employer could demonstrate that the actual events of work were only 15% of all causes of the psychiatric injury would that overcome the presumption?
- Labor Code 3208.3(e): This portion of current law creates a series of rules for how and when claims for psychiatric injury can be filed post-termination. These rules exist in statute to address very real public policy concerns that apply no less in the case of public safety personnel than they do for any other employee. SB 542 not only sets aside all these existing rules, but also goes farther by extending a very clear post-termination presumption.
- Labor Code Section 4660.1(c)(1): This portion of current law, which was enacted by SB 863 (De Leon, 2012), limits the permanent disability that can be associated with psychiatric injury that arises out of a physical injury. It is unclear how provisions in SB 542, specifically Section 3212.15(c), would interact with this existing labor code section.

Current law on psychiatric injuries is carefully crafted based on decades of experience in the workers’ compensation system, and some of the provisions of existing law that were designed specifically to fight fraud and unacceptable system behavior are potentially being set aside by SB 542.

Retroactive Coverage Provisions

Workers’ compensation law is typically applied on a prospective basis, but SB 542 contains a provision making it retroactive to “claims for benefits filed or pending on or after January 1, 2017, including, but not limited to, claims for benefit files on or after that date that have previously been denied”. We must strenuously oppose any sort of retroactivity. Public agency budgets and their levels and layers of insurance coverage can not adjust retroactively to the type of exposure that would likely be created by SB 542. This provision would retroactively create liability for local governments, and they would have to set aside public funds to properly fund expected claims.

Need and Cost Completely Unexamined

While the findings and declarations paint a clear picture of public safety officer exposure to extraordinarily stressful and dangerous situations, the findings do not speak in any way to the current functionality of the workers’ compensation system relative to the types of psychiatric claims in question. California’s workers’ compensation system is studied thoroughly on an annual basis, yet we are aware of no evidence that the workers’ compensation system is treating these types of claims unfairly.

The Department of Industrial Relations did an “Issue Brief” in 2018 in response to a letter from Assemblymember Timothy Grayson. Despite being asked specifically about denial rates for these types of claims, no data was reported that would indicate that public safety officer PTSD claims are being inappropriately denied. In fact, the conclusion of that report states:

“California’s MTUS treatment guidelines and medical evidence search sequence offer appropriate guidance for behavioral health disorders, including PTSD. Pursuant to Labor Code section 3208.3, all workers, including first responders, are covered by workers’ compensation insurance. The evidence shows that cases are underreported and associated stigma prevents care-seeking behavior in general

(including first responders and veterans).” (DIR Issue Brief – Overview of the Behavioral Health of First Responders in California Using PTSD-Related Workers’ Compensation Claims Data – September 4, 2018)

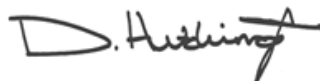
Not only is there a lack of evidence that a presumption is needed, but there is also a lack of information about the cost associated with the changes. We believe the current workers’ compensation system strikes the appropriate balance with respect to psychiatric injuries. Without evidence that a problem exists or an analysis of the potential costs to local entities, especially considering the retroactivity, we don’t believe this legislation should be advanced.

For these reasons and more, we respectfully **OPPOSE** your **SB 542**.

Sincerely,



Faith Borges
Legislative Advocate
California Association of Joint Powers Authorities



Dane Hutchings
Legislative Representative
League of California Cities



Josh Gauger
Legislative and Regulatory Representative
California State Association of Counties



Jean Hurst
Legislative Representative
Urban Counties of California



Dillon Gibbons
Senior Legislative Representative
California Special Districts Association



Jeremy Merz
Vice President
American Property Casualty Insurance Association



Jen Hamelin
Director of Workers’ Compensation
CSAC Excess Insurance Authority



Jason Schmelzer
Legislative Advocate
California Coalition on Workers’ Compensation