

LEGISLATIVE BILL 407

Approved by the Governor May 21, 2021

Introduced by McDonnell, 5; Blood, 3; Hunt, 8; Wayne, 13.

A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to amend section 48-101.01, Revised Statutes Cumulative Supplement, 2020; to provide, change, and eliminate definitions; to include certain county correctional employees within provisions concerning mental injuries and mental illness; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 48-101.01, Revised Statutes Cumulative Supplement, 2020, is amended to read:

48-101.01 (1) The Legislature finds and declares:

(a) The occupations of first responders are recognized as stressful occupations. Only our nation's combat soldiers endure more stress. Similar to military personnel, first responders face unique and uniquely dangerous risks in their sworn mission to keep the public safe. They rely on each other for survival to protect the communities they serve;

(b) On any given day, first responders can be called on to make life and death decisions, witness a young child dying with the child's grief-stricken family, make a decision that will affect a community member for the rest of such person's life, or be exposed to a myriad of communicable diseases and known carcinogens;

(c) On any given day, first responders protect high-risk individuals from themselves and protect the community from such individuals;

(d) First responders are constantly at significant risk of bodily harm or physical assault while they perform their duties;

(e) Constant, cumulative exposure to horrific events make first responders uniquely susceptible to the emotional and behavioral impacts of job-related stressors;

(f) Trauma-related injuries can become overwhelming and manifest in post-traumatic stress, which may result in substance use disorders and even, tragically, suicide; and

(g) It is imperative for society to recognize occupational injuries related to post-traumatic stress and to promptly seek diagnosis and treatment without stigma. This includes recognizing that mental injury and mental illness as a result of trauma is not disordered, but is a normal and natural human response to trauma, the negative effects of which can be ameliorated through diagnosis and effective treatment.

(2) Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder, ~~or~~ frontline state employee, or county correctional officer if such ~~first responder or frontline state employee~~:

(a) Establishes that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(b) Establishes, through a mental health professional, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.

(3) The employee bears the burden of establishing the matters described in subsection (2) of this section by a preponderance of the evidence.

(4) Until January 1, 2028, a first responder may establish prima facie evidence of a personal injury that is a mental injury or mental illness if the first responder:

(a) Presents evidence that the first responder underwent a mental health examination by a mental health professional upon entry into such service or subsequent to such entry and before the onset of the mental injury or mental illness and such examination did not reveal the mental injury or mental illness for which the first responder seeks compensation;

(b) Presents testimony or an affidavit from a mental health professional stating the first responder suffers from a mental injury or mental illness caused by one or more events or series of events which cumulatively produced the mental injury or mental illness which brought about the need for medical attention and the interruption of employment;

(c) Presents evidence that such events or series of events arose out of and in the course of the first responder's employment; and

(d) Presents evidence that, prior to the employment conditions which caused the mental injury or mental illness, the first responder had participated in resilience training and updated the training at least annually thereafter.

(5) For purposes of this section, mental injuries and mental illness arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer and employee relations, including, but not limited to, personnel actions by the employer such as

disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations.

(6)(a) The Department of Health and Human Services shall reimburse a first responder for the cost of annual resilience training not reimbursed by the first responder's employer. The department shall pay reimbursement at a rate determined by the Critical Incident Stress Management Program under section 71-7104. Reimbursement shall be subject to the annual limit set by such program under section 71-7104.

(b) To obtain reimbursement under this subsection, a first responder shall submit an application to the Department of Health and Human Services on a form and in a manner prescribed by the department.

(7) The Department of Health and Human Services shall maintain and annually update records of first responders who have completed annual resilience training.

(8) For purposes of this section:

(a) County correctional officer means a correctional officer employed by a high-population county whose:

(i) Position obligates such employee to maintain order and custody of inmates in a county jail; and

(ii) Duties involve regular and direct interaction with high-risk individuals;

(b) Custody means:

(i) Under the charge or control of a state institution or state agency and includes time spent outside of the state institution or state agency; or

(ii) In the custody of a county jail in a high-population county or in the process of being placed in the custody of a county jail in a high-population county;

(c) (a) First responder means a sheriff, a deputy sheriff, a police officer, an officer of the Nebraska State Patrol, a volunteer or paid firefighter, or a volunteer or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury;

(d) (b) Frontline state employee means an employee of the Department of Correctional Services or the Department of Health and Human Services whose duties involve regular and direct interaction with high-risk individuals;

(e) High-population county means a county with more than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census;

(f) (e) High-risk individual means an individual in state custody for whom violent or physically intimidating behavior is common, including, but not limited to, a committed offender as defined in section 83-170, a patient at a regional center as defined in section 71-911, and a juvenile committed to the Youth Rehabilitation and Treatment Center-Kearney or the Youth Rehabilitation and Treatment Center-Geneva, and a person in the custody of a county jail in a high-population county or in the process of being placed in the custody of a county jail in a high-population county;

(g) (d) Mental health professional means:

(i) A practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act;

(ii) A practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact; or

(iii) A person licensed as an independent mental health practitioner under the Mental Health Practice Act; and

(h) (e) Resilience training means training that meets the guidelines established by the Critical Incident Stress Management Program under section 71-7104 and that teaches how to adapt to, manage, and recover from adversity, trauma, tragedy, threats, or significant sources of stress. ; and

~~(f) State custody means under the charge or control of a state institution or state agency and includes time spent outside of the state institution or state agency.~~

(9) All other provisions of the Nebraska Workers' Compensation Act apply to this section.

Sec. 2. Original section 48-101.01, Revised Statutes Cumulative Supplement, 2020, is repealed.