

1 **SENATE FLOOR VERSION**

2 April 11, 2023

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 2398

6 By: Hays and West (Josh) of the
7 House

8 and

9 Rosino of the Senate

10 An Act relating to workers' compensation; amending
11 85A O.S. 2021, Section 13, which relates to certain
12 injuries related to mental health; providing for
13 computation of benefits for certain persons;
14 providing for temporary pension benefits; imposing
15 limit on total period for disability benefits;
16 providing for award of permanent total disability
17 based upon maximum medical improvement; providing for
18 payment of benefits based on certain injury; imposing
19 time limit on benefits; imposing limit on employer
20 responsibility for prescription medicine; defining
21 terms; providing for transfer of payment for claims
22 or increased premiums incurred by cities or towns;
23 prescribing procedures; providing for terminology in
24 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

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

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

15 B. 1. Notwithstanding any other provision of this act, where a
16 claim is for mental injury or illness, the employee shall be limited
17 to twenty-six (26) weeks of disability benefits unless it is shown
18 by clear and convincing evidence that benefits should continue for a
19 set period of time, not to exceed a total of fifty-two (52) weeks.
20 If the treating physician is of the opinion that the first responder
21 is temporarily unable to perform his or her job or any alternative
22 work offered by the employer, he or she shall be entitled to receive
23 compensation which is the greater of the weekly benefit provided for
24 in a collective bargaining agreement or according to the policy of

1 the employer, or seventy percent (70%) of the injured employee's
2 average weekly wage not to exceed the state average weekly wage. If
3 the employee has a temporary pension benefit available at no
4 additional cost to the employee and the benefit is equal to or
5 greater than the temporary award in this system the employer may
6 elect to exercise the temporary pension benefit. In no event shall
7 disability benefits extend beyond fifty-two (52) weeks.

8 2. Notwithstanding any other provision of this section, a
9 person who receives benefits provided herein for a mental injury or
10 illness not caused by a physical injury who, after reaching maximum
11 medical improvement, is unable to perform the essential functions of
12 their employment position and who is not eligible to receive a
13 disability retirement through their pension or retirement system
14 shall be eligible to be awarded permanent disability benefits **not to**
15 **exceed Fifty Thousand Dollars (\$50,000.00)** as provided for in this
16 act.

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

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

1 C. 1. In the event the Workers' Compensation Commission finds
2 that a first responder has suffered post-traumatic stress disorder
3 not accompanied by a physical injury, as defined herein, the
4 employer shall provide reasonable and necessary medical treatment
5 for such injury, subject to the Oklahoma Workers' Compensation Fee
6 Schedule, for a period of no longer than one (1) year. The employer
7 shall not be responsible for medical treatment in the form of
8 prescription medicine in excess of Ten Thousand Dollars
9 (\$10,000.00).

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

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

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

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

23 a. recurrent and intrusive distressing recollections of
24 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.

1 F. "Emergency medical technician", for the purpose of this
2 section, means a person who holds a license as an emergency medical
3 technician, an intermediate or advanced emergency medical
4 technician, or a paramedic, such license issued by the State
5 Department of Health to perform emergency medical services in
6 accordance with the Oklahoma Emergency Response Systems Development
7 Act and the rules and standards promulgated by the State
8 Commissioner of Health.

9 G. In the event that a public safety protection district is
10 established pursuant to the provisions of Section 29-151 of Title 11
11 of the Oklahoma Statutes, a city or town in such a district that
12 incurs a claim relating to post-traumatic stress disorder may, at
13 the city or town's option, transfer the payment of all or any
14 portion of the claim or increased workers' compensation premiums to
15 the judgment rolls of the geographic area or areas serviced by the
16 department of the injured worker and shall be listed on official
17 publications as "First Responder PTSD".

18 **SECTION 2.** This act shall become effective January 1, 2024.

19 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
20 April 11, 2023 - DO PASS AS AMENDED

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