Act 29 and PTSD Claims by Public Safety Officers

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In recent weeks, state lawmakers reformed aspects of Wisconsin's worker's compensation law through the enactment of Senate Bill No. 11, now 2021 Wisconsin Act 29. Among other things, Act 29 modifies Wisconsin's existing worker's compensation eligibility standards for certain mental injury claims. In this regard, Act 29 is limited in its scope to claims by law enforcement officers and full-time firefighters employed by the State or a political subdivision thereof (collectively "public safety officers"). Additionally, these new standards only apply to claims involving a work-related mental injury that results in the claimant's diagnosis of post-traumatic stress disorder ("PTSD"), and which is not accompanied by a physical injury. The Wisconsin State Assembly passed S.B. 11 on April 14, 2021, and Governor Evers signed the bill into law on April 27, 2021. Act 29 was officially published and took effect on April 28, 2021. It will be effective for claim incidents as of April 29, 2021.

The "Extraordinary Stress" Standard

The Wisconsin Supreme Court first acknowledged the compensability of "non-traumatic mental injuries," which can include PTSD, in 1974. *see School Dist. No. 1. v. DILHR*, 62 Wis. 2d 370, 215 N.W.2d 373 (1974). In doing so, the Court held that "non-traumatic mental injuries" are compensable only if the claimant is able to establish that the events that caused such an injury "resulted from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience." *Id.* at 377-78. The Wisconsin legislature codified this "extraordinary stress" standard in Wis. Stat. § 102.01(2)(c) of the Worker's Compensation Act. Its scope has since been narrowed by application to only include "non-traumatic mental injuries" arising from extraordinary stresses in the claimant's *particular line of work*. Because the nature of public safety officers' line of work is inherently dangerous and often involves life or death situations, the job-specific analysis applied under the "extraordinary stress" standard imposed an especially high burden of proof on public safety officers making such claims.

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With respect to mental injury claims, Act 29 aims to make treatment and worker's compensation benefits more accessible to public safety officers who suffer from work-related PTSD. One of its central features is the abolishment of the "extraordinary stress" standard for PTSD claims made by public safety officers. Instead, entitlement to benefits for PTSD claims without an accompanying physical injury is established if the claimant proves the conditions of liability by a "preponderance of the evidence." Under the reformed compensability standards, the mental injury must be caused by the claimant's performance of his or her job duties and result in a diagnosis of PTSD by a licensed psychiatrist or psychologist using the criteria set forth in the 5th Edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association. In order to be compensable, the PTSD cannot be the result of a good-faith employment action by the employer, such as a disciplinary action, job transfer, or termination.

While the enactment of Act 29 is anticipated to result in more compensable PTSD claims by public safety officers, it also contains provisions limiting liability and entitlement to benefits. Subject to the conditions of liability set forth under Wis. Stat. § 102.03, eligible claimants are entitled to worker's compensation benefits for wage loss benefits and treatment costs. However, Act 29 specifically limits covered employers' liability for PTSD claims by public safety officers by capping entitlement to treatment and wage loss benefits to no more than 32 weeks after the injury is first reported. Additionally, public safety officers are restricted from receiving benefits secondary to a PTSD claim to not more than three times in his or her lifetime, regardless of changes in employers or employment.

It is uncertain whether this statutory change allows for loss of earning capacity claims or vocational retraining claims because of the 32 week limit provision. If a claimant qualifies under the extraordinary stress test, then they would still be able to pursue those benefits.

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