As Passed by the House

133rd General Assembly
Regular Session Sub. H. B. No. 308
2019-2020

Representative Patton


A BILL

To amend sections 4123.01, 4123.026, and 4123.46 and to enact sections 145.364, 742.391, 3309.402, 4123.87, and 5505.182 of the Revised Code concerning workers' compensation and disability retirement for peace officers, firefighters, and emergency medical workers diagnosed with post-traumatic stress disorder arising from employment without an accompanying physical injury.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4123.01, 4123.026, and 4123.46 be amended and sections 145.364, 742.391, 3309.402, 4123.87, and 5505.182 of the Revised Code be enacted to read as follows:

Sec. 145.364. Upon determining that a member's post-
traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 145.36 or 145.361 of the Revised Code, the public employees retirement board, notwithstanding the exceptions to public inspection in division (A)(2) of section 145.27 of the Revised Code or the privileges contained in division (B) of that section, shall notify the administrator of workers' compensation of all of the following:

(A) The name of the member;

(B) That the member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 145.36 or 145.361 of the Revised Code;

(C) The effective date of the member's disability benefit;

(D) The date that payments for the member's disability benefit commence.

Sec. 742.391. Upon determining that a member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 742.38 or 742.39 of the Revised Code, the board of trustees of the Ohio police and fire pension fund, notwithstanding the exceptions to public inspection in division (B) of section 742.41 of the Revised Code or the privileges contained in division (C) of that section, shall notify the administrator of workers' compensation of all of the following:

(A) The name of the member;

(B) That the member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 742.38 or 742.39 of the.
Revised Code:

(C) The effective date of the member's disability benefit;

(D) The date that payments for the member's disability benefit commence.

Sec. 3309.402. Upon determining that a member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 3309.35, 3309.40, or 3309.401 of the Revised Code, the school employees retirement board, notwithstanding the exceptions to public inspection in division (A)(2) of section 3309.22 of the Revised Code or the privileges contained in division (B) of that section, shall notify the administrator of workers' compensation of all of the following:

(A) The name of the member;

(B) That the member's post-traumatic stress disorder, without an accompanying physical injury, qualifies that member for a disability benefit under section 3309.35, 3309.40, or 3309.401 of the Revised Code;

(C) The effective date of the member's disability benefit;

(D) The date that payments for the member's disability benefit commence.

Sec. 4123.01. As used in this chapter:

(A)(1) "Employee" means:

(a) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and
townships, whether paid or volunteer, and wherever serving within the state or on temporary assignment outside thereof, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of education.

As used in division (A)(1)(a) of this section, the term "employee" includes the following persons when responding to an inherently dangerous situation that calls for an immediate response on the part of the person, regardless of whether the person is within the limits of the jurisdiction of the person's regular employment or voluntary service when responding, on the condition that the person responds to the situation as the person otherwise would if the person were on duty in the person's jurisdiction:

(i) Off-duty peace officers. As used in division (A)(1)(a) (i) of this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(ii) Off-duty firefighters, whether paid or volunteer, of a lawfully constituted fire department.

(iii) Off-duty first responders, emergency medical technicians basic, emergency medical technicians intermediate, or emergency medical technicians paramedic, whether paid or volunteer, emergency medical workers of an ambulance service organization or emergency medical service organization pursuant to Chapter 4765. of the Revised Code.

(b) Every person in the service of any person, firm, or private corporation, including any public service corporation,
that (i) employs one or more persons regularly in the same
business or in or about the same establishment under any
contract of hire, express or implied, oral or written, including
aliens and minors, household workers who earn one hundred sixty
dollars or more in cash in any calendar quarter from a single
household and casual workers who earn one hundred sixty dollars
or more in cash in any calendar quarter from a single employer,
or (ii) is bound by any such contract of hire or by any other
written contract, to pay into the state insurance fund the
premiums provided by this chapter.

(c) Every person who performs labor or provides services
pursuant to a construction contract, as defined in section
4123.79 of the Revised Code, if at least ten of the following
criteria apply:

(i) The person is required to comply with instructions
from the other contracting party regarding the manner or method
of performing services;

(ii) The person is required by the other contracting party
to have particular training;

(iii) The person's services are integrated into the
regular functioning of the other contracting party;

(iv) The person is required to perform the work
personally;

(v) The person is hired, supervised, or paid by the other
contracting party;

(vi) A continuing relationship exists between the person
and the other contracting party that contemplates continuing or
recurring work even if the work is not full time;
(vii) The person's hours of work are established by the other contracting party;

(viii) The person is required to devote full time to the business of the other contracting party;

(ix) The person is required to perform the work on the premises of the other contracting party;

(x) The person is required to follow the order of work set by the other contracting party;

(xi) The person is required to make oral or written reports of progress to the other contracting party;

(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;

(xiii) The person's expenses are paid for by the other contracting party;

(xiv) The person's tools and materials are furnished by the other contracting party;

(xv) The person is provided with the facilities used to perform services;

(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;

(xvii) The person is not performing services for a number of employers at the same time;

(xviii) The person does not make the same services available to the general public;

(xix) The other contracting party has a right to discharge the person;
(xx) The person has the right to end the relationship with
the other contracting party without incurring liability pursuant
to an employment contract or agreement.

Every person in the service of any independent contractor
or subcontractor who has failed to pay into the state insurance
fund the amount of premium determined and fixed by the
administrator of workers' compensation for the person's
employment or occupation or who is a self-insuring employer and
who has failed to pay compensation and benefits directly to the
employer's injured and to the dependents of the employer's
killed employees as required by section 4123.35 of the Revised
Code, shall be considered as the employee of the person who has
entered into a contract, whether written or verbal, with such
independent contractor unless such employees or their legal
representatives or beneficiaries elect, after injury or death,
to regard such independent contractor as the employer.

(d) Every person who operates a vehicle or vessel in the
performance of services for or on behalf of a motor carrier
transporting property, unless all of the following factors apply
to the person:

(i) The person owns the vehicle or vessel that is used in
performing the services for or on behalf of the carrier, or the
person leases the vehicle or vessel under a bona fide lease
agreement that is not a temporary replacement lease agreement.
For purposes of this division, a bona fide lease agreement does
not include an agreement between the person and the motor
carrier transporting property for which, or on whose behalf, the
person provides services.

(ii) The person is responsible for supplying the necessary
personal services to operate the vehicle or vessel used to
provide the service.

(iii) The compensation paid to the person is based on factors related to work performed, including on a mileage-based rate or a percentage of any schedule of rates, and not solely on the basis of the hours or time expended.

(iv) The person substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper.

(v) The person enters into a written contract with the carrier for whom the person is performing the services that describes the relationship between the person and the carrier to be that of an independent contractor and not that of an employee.

(vi) The person is responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment used to provide the services, including maintenance, fuel, repairs, supplies, vehicle or vessel insurance, and personal expenses, except that the person may be paid by the carrier the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees.

(vii) The person is responsible for any economic loss or economic gain from the arrangement with the carrier.

(2) "Employee" does not mean any of the following:

(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;

(b) Any officer of a family farm corporation;

(c) An individual incorporated as a corporation;
(d) An officer of a nonprofit corporation, as defined in section 1702.01 of the Revised Code, who volunteers the person's services as an officer;

(e) An individual who otherwise is an employee of an employer but who signs the waiver and affidavit specified in section 4123.15 of the Revised Code on the condition that the administrator has granted a waiver and exception to the individual's employer under section 4123.15 of the Revised Code;

(f)(i) A qualifying employee described in division (A)(14)(a) of section 5703.94 of the Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;

(ii) A qualifying employee described in division (A)(14)(b) of section 5703.94 of the Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period on critical infrastructure owned or used by the employee's employer;

(iii) As used in division (A)(2)(f) of this section, "critical infrastructure," "disaster response period," "disaster work," and "qualifying employee" have the same meanings as in section 5703.94 of the Revised Code.

Any employer may elect to include as an "employee" within this chapter, any person excluded from the definition of "employee" pursuant to division (A)(1)(d) or (A)(2)(a), (b), (c), or (e) of this section in accordance with rules adopted by the administrator, with the advice and consent of the bureau of workers' compensation board of directors. If an employer is a partnership, sole proprietorship, individual incorporated as a
corporation, or family farm corporation, such employer may elect
to include as an "employee" within this chapter, any member of
such partnership, the owner of the sole proprietorship, the
individual incorporated as a corporation, or the officers of the
family farm corporation. Nothing in this section shall prohibit
a partner, sole proprietor, or any person excluded from the
definition of "employee" pursuant to division (A)(2)(a), (b),
(c), or (e) of this section from electing to be included as an
"employee" under this chapter in accordance with rules adopted
by the administrator, with the advice and consent of the board.

In the event of an election, the employer or person
electing coverage shall serve upon the bureau of workers'
compensation written notice naming the person to be covered and
include the person's remuneration for premium purposes in all future payroll reports. No partner, sole proprietor, or person
excluded from the definition of "employee" pursuant to division
(A)(1)(d) or (A)(2)(a), (b), (c), or (e) of this section, shall
receive benefits or compensation under this chapter until the
bureau receives written notice of the election permitted by this
section.

For informational purposes only, the bureau shall
prescribe such language as it considers appropriate, on such of
its forms as it considers appropriate, to advise employers of
their right to elect to include as an "employee" within this
chapter a sole proprietor, any member of a partnership, or a
person excluded from the definition of "employee" under division
(A)(1)(d) or (A)(2)(a), (b), (c), or (e) of this section, that
they should check any health and disability insurance policy, or
other form of health and disability plan or contract, presently
covering them, or the purchase of which they may be considering,
to determine whether such policy, plan, or contract excludes
benefits for illness or injury that they might have elected to have covered by workers' compensation.

(B)(1) "Employer" means:

(a) The state, including state hospitals, each county, municipal corporation, township, school district, and hospital owned by a political subdivision or subdivisions other than the state;

(b) Every person, firm, professional employer organization, and private corporation, including any public service corporation, that (i) has in service one or more employees or shared employees regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, or (ii) is bound by any such contract of hire or by any other written contract, to pay into the insurance fund the premiums provided by this chapter.

All such employers are subject to this chapter. Any member of a firm or association, who regularly performs manual labor in or about a mine, factory, or other establishment, including a household establishment, shall be considered an employee in determining whether such person, firm, or private corporation, or public service corporation, has in its service, one or more employees and the employer shall report the income derived from such labor to the bureau as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employee.

(2) "Employer" does not include a franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless the franchisor agrees to assume that role in writing or a court of competent jurisdiction.
determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademark, brand, or both. For purposes of this division, "franchisor" and "franchisee" have the same meanings as in 16 C.F.R. 436.1.

(C) "Injury" includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment. "Injury" does not include:

(1) Psychiatric conditions except where as follows:

(a) Where the claimant's psychiatric conditions have arisen from an injury or occupational disease sustained by that claimant or where:

(b) Where the claimant's psychiatric conditions have arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate;

(c) Where the claimant is a peace officer, firefighter, or emergency medical worker and is diagnosed with post-traumatic stress disorder that has been received in the course of, and has arisen out of, the claimant's employment as a peace officer, firefighter, or emergency medical worker.

(2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;

(3) Injury or disability incurred in voluntary participation in an employer-sponsored recreation or fitness activity if the employee signs a waiver of the employee's right to compensation or benefits under this chapter prior to engaging in the recreation or fitness activity;
(4) A condition that pre-existed an injury unless that 
pre-existing condition is substantially aggravated by the 
injury. Such a substantial aggravation must be documented by 
objective diagnostic findings, objective clinical findings, or 
objective test results. Subjective complaints may be evidence of 
such a substantial aggravation. However, subjective complaints 
without objective diagnostic findings, objective clinical 
findings, or objective test results are insufficient to 
substantiate a substantial aggravation.

(D) "Child" includes a posthumous child and a child 
legally adopted prior to the injury.

(E) "Family farm corporation" means a corporation founded 
for the purpose of farming agricultural land in which the 
majority of the voting stock is held by and the majority of the 
stockholders are persons or the spouse of persons related to 
each other within the fourth degree of kinship, according to the 
rules of the civil law, and at least one of the related persons 
is residing on or actively operating the farm, and none of whose 
stockholders are a corporation. A family farm corporation does 
not cease to qualify under this division where, by reason of any 
device, bequest, or the operation of the laws of descent or 
distribution, the ownership of shares of voting stock is 
transferred to another person, as long as that person is within 
the degree of kinship stipulated in this division.

(F) "Occupational disease" means a disease contracted in 
the course of employment, which by its causes and the 
characteristics of its manifestation or the condition of the 
employment results in a hazard which distinguishes the 
employment in character from employment generally, and the 
employment creates a risk of contracting the disease in greater
degree and in a different manner from the public in general.

(G) "Self-insuring employer" means an employer who is granted the privilege of paying compensation and benefits directly under section 4123.35 of the Revised Code, including a board of county commissioners for the sole purpose of constructing a sports facility as defined in section 307.696 of the Revised Code, provided that the electors of the county in which the sports facility is to be built have approved construction of a sports facility by ballot election no later than November 6, 1997.

(H) "Private employer" means an employer as defined in division (B)(1)(b) of this section.

(I) "Professional employer organization" has the same meaning as in section 4125.01 of the Revised Code.

(J) "Public employer" means an employer as defined in division (B)(1)(a) of this section.

(K) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of gender; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(L) "Other-states' insurer" means an insurance company that is authorized to provide workers' compensation insurance coverage in any of the states that permit employers to obtain insurance for workers' compensation claims through insurance companies.

(M) "Other-states' coverage" means both of the following:
(1) Insurance coverage secured by an eligible employer for workers' compensation claims of employees who are in employment relationships localized in a state other than this state or those employees' dependents;

(2) Insurance coverage secured by an eligible employer for workers' compensation claims that arise in a state other than this state where an employer elects to obtain coverage through either the administrator or an other-states' insurer.

(N) "Limited other-states coverage" means insurance coverage provided by the administrator to an eligible employer for workers' compensation claims of employees who are in an employment relationship localized in this state but are temporarily working in a state other than this state, or those employees' dependents.

(O) "Motor carrier" has the same meaning as in section 4923.01 of the Revised Code.

(P) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(Q) "Firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.

(R) "Emergency medical worker" means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.

Sec. 4123.026. (A) The administrator of workers' compensation, or a self-insuring public employer for the peace officers, firefighters, and emergency medical workers employed by or volunteering for that self-insuring public employer, shall
pay the costs of conducting post-exposure medical diagnostic services, consistent with the standards of medical care existing at the time of the exposure, to investigate whether an injury or occupational disease was sustained by a peace officer, firefighter, or emergency medical worker when coming into contact with the blood or other body fluid of another person in the course of and arising out of the peace officer's, firefighter's, or emergency medical worker's employment, or when responding to an inherently dangerous situation in the manner described in, and in accordance with the conditions specified under, division (A)(1)(a) of section 4123.01 of the Revised Code, through any of the following means:

(1) (A) Splash or spatter in the eye or mouth, including when received in the course of conducting mouth-to-mouth resuscitation;

(2) (B) A puncture in the skin;

(3) (C) A cut in the skin or another opening in the skin such as an open sore, wound, lesion, abrasion, or ulcer.

(B) As used in this section:

(1) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(2) "Firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.

(3) "Emergency medical worker" means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.
Sec. 4123.46.  (A)(1) Except as provided in division (A)(2)
of this section, the bureau of workers' compensation shall
disburse the state insurance fund to employees of employers who
have paid into the fund the premiums applicable to the classes
to which they belong when the employees have been injured in the
course of their employment, wherever the injuries have occurred,
and provided the injuries have not been purposely self-
inflicted, or to the dependents of the employees in case death
has ensued.

(2) As long as injuries have not been purposely self-
inflicted, the bureau shall disburse the surplus fund created
under section 4123.34 of the Revised Code to off-duty peace
officers, firefighters, and emergency medical technicians, and
first responders, or to their dependents if death ensues, who are injured while responding to inherently dangerous
situations that call for an immediate response on the part of
the person, regardless of whether the person was within the
limits of the person's jurisdiction when responding, on the
condition that the person responds to the situation as the
person otherwise would if the person were on duty in the
person's jurisdiction.

As used in division (A)(2) of this section, "peace
officer," "firefighter," "emergency medical technician," "first
responder," and "jurisdiction" have the same meanings as in
section 4123.01 of the Revised Code.

(B) All self-insuring employers, in compliance with this
chapter, shall pay the compensation to injured employees, or to
the dependents of employees who have been killed in the course
of their employment, unless the injury or death of the employee
was purposely self-inflicted, and shall furnish the medical,
surgical, nurse, and hospital care and attention or funeral 
expenses as would have been paid and furnished by virtue of this 
chapter under a similar state of facts by the bureau out of the 
state insurance fund if the employer had paid the premium into 
the fund.

If any rule or regulation of a self-insuring employer 
provides for or authorizes the payment of greater compensation 
or more complete or extended medical care, nursing, surgical, 
and hospital attention, or funeral expenses to the injured 
employees, or to the dependents of the employees as may be 
killed, the employer shall pay to the employees, or to the 
dependents of employees killed, the amount of compensation and 
furnish the medical care, nursing, surgical, and hospital 
attention or funeral expenses provided by the self-insuring 
employer's rules and regulations.

(C) Payment to injured employees, or to their dependents 
in case death has ensued, is in lieu of any and all rights of 
action against the employer of the injured or killed employees.

Sec. 4123.87. (A) No claimant shall be entitled to 
compensation or benefits under this chapter for an injury 
described in division (C)(1)(c) of section 4123.01 of the 
Revised Code for any period of time during which the claimant 
received a disability benefit or disability retirement from the 
public employees retirement system, the Ohio police and fire 
pension fund, the school employees retirement system, or the 
state highway patrol retirement system.

(B) If a claimant receives an award of compensation or 
benefits under this chapter or Chapter 4121., 4127., or 4131. of 
the Revised Code for an injury described in division (C)(1)(c) 
of section 4123.01 of the Revised Code for the same time period
for which the claimant received a disability benefit or
disability retirement from the public employees retirement
system, the Ohio police and fire pension fund, the school
employees retirement system, or the state highway patrol
retirement system, the administrator or any self-insuring
employer, by any lawful means, may collect from the employee or
the employee's dependents any of the following:

(1) The amount of compensation or benefits paid to the
claimant by the administrator or a self-insuring employer
pursuant to this chapter or Chapter 4121., 4127., or 4131. of
the Revised Code for that time period;

(2) Any interest, attorney's fees, and costs the
administrator or the self-insuring employer incurs in collecting
that payment.

Sec. 5505.182. Upon determining that a member's post-
traumatic stress disorder, without an accompanying physical
injury, qualifies that member for disability retirement under
section 5505.18 of the Revised Code, the state highway patrol
retirement board, notwithstanding the exceptions to public
inspection in division (C)(2) of section 5505.04 of the Revised
Code or the privileges contained in division (D) of that
section, shall notify the administrator of workers' compensation
of all of the following:

(A) The name of the member;

(B) That the member's post-traumatic stress disorder,
without an accompanying physical injury, qualifies that member
for disability retirement under section 5505.18 of the Revised
Code;

(C) The effective date of the member's disability
(D) The date that payments for the member’s disability retirement commence.

Section 2. That existing sections 4123.01, 4123.026, and 4123.46 of the Revised Code are hereby repealed.