

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/21

SPONSOR Sedillo Lopez LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Educational Employee PTSD SB 302

ANALYST Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMPSIA and APS		Indeterminate			Recurring	General Fund for Public School Support

(Parenthesis ( ) Indicate Expenditure Decreases)

#### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

General Services Department (GSD)

New Mexico Public School Insurance Authority (NMPSIA)

#### No Response Received

Public Education Department (PED)

#### SUMMARY

##### Synopsis of Bill

Senate Bill 320 (SB320) proposes a new section of the New Mexico Occupational Disease Disablement Law, Section 52-3-1 *et seq.*, to add post-traumatic stress disorder (PTSD) as an occupational disease entitling educational employees to a presumption in favor of benefits. The bill also provides for medical treatment by the employer until it is determined that the presumption of the PTSD is work-related does not apply, in which case the employers' insurer will be reimbursed.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

#### FISCAL IMPLICATIONS

The bill would treat PTSD as a presumed condition which could result in additional cases necessitating dispute resolution by the Workers' Compensation Administration (WCA). In its

analysis of similar bill SB562 for the 2019 legislative session, WCA noted educational employees may file a claim asserting PTSD related to employment. In those instances, when an employer denies the PTSD is connected to employment, the worker can establish the causal relationship through medical testimony of a healthcare provider with expertise. If the opinion offered by the healthcare provider is not controverted by another healthcare provider, the worker's physician's opinion on causation is binding under the uncontroverted medical evidence rule. In the current legal framework, the onus is placed on the employee to demonstrate entitlement to benefits.

NMPSIA explained if SB302 is enacted, the potential of increased budget requests would be necessary depending on if benefits for medical, temporary disability and permanent disability is awarded to employees with PTSD without an injury or incident. Detailed information regarding these benefits would be necessary before NMPSIA can determine what those costs will be.

The bill provides for medical treatment until a court determines the presumption does not apply.

### **SIGNIFICANT ISSUES**

The New Mexico Occupational Disease Disablement Law provides that employers are subject to this law when the conditions and hazards inherent in an occupation expose employees to occupational disease. Employers that come within this law include school districts, public institutions, and employers of employees, whether full time or part time, with few exceptions. Since the bill defines an "educational employee" as a licensed or unlicensed employee of a school district or private school, the publicly-funded insurance coverages impacted would be provided through the Albuquerque Public School (APS) district and NMPSIA for schools outside of APS.

The New Mexico Occupational Disease Disablement Law covers "mental impairment" only if it meets certain criteria. Although the law does not use the term PTSD, at Section 52-1-24, "primary mental impairment" includes "a mental illness arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances...

The bill provides that if an educational employee is diagnosed with PTSD, and there is no evidence the PTSD preexisted the employment, the PTSD is presumed to be proximately caused by the employment, unless a preponderance of evidence shows otherwise, including if the employee's activities outside of employment posed a significant risk of developing PTSD. If these evidentiary requirements have not been met, job-related illness or injury medical benefits would be covered.

### **ADMINISTRATIVE IMPLICATIONS**

NMPSIA reported potential for the need for additional staff to handle increased claim volume.

### **OTHER SUBSTANTIVE ISSUES**

PTSD is under trauma- and stressor-related disorders in the diagnostic and statistical manual of

mental disorders and requires exposure to a traumatic or stressful event as a diagnostic criterion.

AHO/al