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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

**Bill Number** SB562                      **Sponsor** Sedillo Lopez

**Tracking Number** .213467.1              **Committee Referrals** SEC/SJC

**Short Title** Educational Employment Occupational PTSD

**Analyst** Force    **Original Date** 2/19/19  
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**BILL SUMMARY**

Synopsis of Bill

Senate Bill 562 (SB562) proposes a new section of the New Mexico Occupational Disease Disablement Law (Section 52-3-1, *et seq*) creating a presumption that incidents of post-traumatic stress disorder (PTSD) result from an educational employee's employment. That is, if an educational employee is diagnosed with PTSD that results in physical or mental impairment or death after the employment period, that PTSD would be presumed to be proximately caused by employment in the educational system. This presumption shifts the burden of proof to the defendant, likely a school district or a school, to rebut the presumption by a preponderance of evidence that the employee engaged in conduct or activity outside of work that posed a significant risk of developing PTSD. Unless and until a court determines otherwise, medical treatment based on the presumption of PTSD being work-related, treatment of the condition is to be provided by an employer as for a job-related illness or injury.

**FISCAL IMPACT**

SB562 does not contain an appropriation.

The Workers' Compensation Administration (WCA) indicates the provisions of SB562 may give rise to additional cases requiring dispute resolution by WCA.

**SUBSTANTIVE ISSUES**

WCA indicates under current law, when an employer denies the relationship between PTSD and a worker's employment, the onus of proof is on the worker, who can attempt to establish the causal relationship with medical testimony of a healthcare provider. If that opinion is not refuted by another healthcare provider or independent examiner, the worker's physician's opinion on causation is binding under the uncontroverted medical evidence rule in workers' compensation cases. SB562 would shift that initial onus to the worker's employer.

Generally, the risk of developing PTSD depends on the nature of the critical incident, the individual's personality and life history, and events that may occur in the aftermath of the trauma. According to

the Society of Occupational Medicine, prevention of work-related PTSD should include a sound organizational and psychological work environment, systematic training of employees, social support from colleagues and managers and appropriate follow-up of employees after a critical event. The Society notes diagnosis of PTSD is mostly based on the patient's self-reported symptoms, a major methodological problem that may encourage symptom exaggeration.

The Society of Occupational Medicine suggests proactive training in stress management rather than reaction after the trauma is important for personnel who have a high risk of encountering traumatic stress, such as first responders and other emergency workers. Further, early intervention, sometimes referred to as "psychological first aid," after the trauma is important to the employee and can help them regain a sense of empowerment and expectation of recovery. Workplace crisis management teams with a trained team can help ensure employees receive information and support that can aid recovery and speed return to work. Proactive training and support may help mitigate circumstances leading to PTSD and ameliorate the cost of providing post-traumatic care.

SB562 does not address prevention of PTSD, however, instead focusing on liability and remedies post-diagnosis. SB562 essentially shifts the immediate burden of proof from the person alleging occupational PTSD to the entity required to refute or rebut the new presumption that an educational employee's PTSD arises from their employment. Generally, at law, the person alleging an injury is required to establish the elements of a prima facie case. For instance, in a case alleging tortious battery, the complainant has the burden of proof to establish (1) that there was a specific intent to make contact with the person of another (2) in a harmful or offensive manner, (3) without consent, and (4) it results in a harmful or offensive contact. It is when that initial burden is met by the complainant that the burden of proof would shift to the defendant, who must now prove otherwise by a preponderance of evidence, or claim an affirmative defense, requiring its own elements of proof to be met by the defendant. Immediately shifting the burden of proof to a defendant is generally outside the normal practice.

Thus, under ordinary circumstances, a presumption of occupational PTSD requiring refutation by a defendant would be an unusual circumstance. Moreover, SB562 and its immediate presumption of occupational PTSD for educational employees requires a rebuttal by a preponderance of the evidence that the employee developed PTSD as a result of activities outside of employment that posed a significant risk of developing PTSD, potentially a very difficult presumption to rebut, that can implicate significant workers' compensation benefits to treat.

## **ADMINISTRATIVE IMPLICATIONS**

WCA notes the number of disputed claims filed with the agency may increase as a result of SB562's passage. Further, WCA has only a handful of mental health professionals treating workers' compensation patients. If SB562 is enacted, there may be a greater need for additional mental health professionals who accept workers' compensation coverage for educational employees.

## **SOURCES OF INFORMATION**

- LESC files
- Workers' Compensation Administration (WCA)