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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**55th Legislature, 1st Session, 2021**

<b>Bill Number</b>	<u>SB302</u>	<b>Sponsor</b>	<u>Sedillo Lopez</u>
<b>Tracking Number</b>	<u>.218662.1</u>	<b>Committee Referrals</b>	<u>SEC/SJC</u>
<b>Short Title</b>	<u>Educational Employee PTSD</u>		
<b>Analyst</b>	<u>Canada</u>	<b>Original Date</b>	<u>2/16/2021</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Bill

Senate Bill 302 (SB302) adds a new section to the New Mexico Occupational Disease Disablement Law, 52-3-1 NMSA 1978, that creates a presumption an education employee's employment results in incidents of post-traumatic stress disorder (PTSD). Under the bill, if an educational employee is diagnosed with PTSD that results in physical or mental impairment or death "after the period of employment indicated," that PTSD would be presumed to be proximately caused by employment in the educational system. SB302 specifies this determination can be challenged if the school employees engaged in conduct or activities outside of employment that posed a significant risk of contracting or developing PTSD. The bill further specifies medical treatment shall be provided by an employer for a job-related illness or injury related to PTSD. The presumption can be challenged in court, and if the court determines the employee's illness is not job-related, the employer's workers' compensation insurance provider must be reimbursed for healthcare costs by the medical or health insurance plan provided for the educational employee by the employer.

**FISCAL IMPACT**

SB302 does not contain an appropriation.

The Public School Insurance Authority (NMPSIA) and Albuquerque Public Schools provide workers compensation coverage for public schools in New Mexico. Number and severity of claims can affect the cost of risk insurance premiums. According to NMPSIA, over the past several years, worker compensation claim frequency has been steadily decreasing while claim severity has been steadily increasing. NMPSIA advised PED to request an increase of \$5.5 million for FY22 for risk programs, which includes worker compensation. NMPSIA anticipates an increase of 7.87 percent for risk insurance premiums in FY21. Schools pay premiums for risk coverage based on their own claims. The potential cost increase cannot be determined at this time because it depends on the number of claims filed and severity of claims related to PTSD.

According to the public education department (PED), because successful rebuttal of the presumption created by SB302 requires adjudication by a court of competent jurisdiction, it would

likely require work by an employer's attorney that may not be covered by existing resources, increasing the cost to school districts.

## **SUBSTANTIVE ISSUES**

According to the Workers' Compensation Administration (WCA) annual report, occupational diseases have routinely made up a small share of New Mexico's worker compensation claims. Because many occupational diseases take a long time to manifest, workers are typically at advanced impairment stages by the time they are first diagnosed. In 2019, New Mexico had 30 claims related to mental stress or a mental disorder out of 404 claims.

Under current workers compensation law, "occupational disease" is defined as any disease peculiar to the occupation in which the employee was engaged due to causes in excess of the ordinary hazards of employment. It includes a disease due to exposure or contact with any radioactive material by an employee in the course of his employment. Within current New Mexico occupational disease disablement law, the only specific profession named is firefighter. Within Section 52-3-32.1 NMSA 1978, 13 conditions are listed that relate to the profession and designate specific diagnosis after certain periods of time. For example, a firefighter can claim brain cancer after 10 years of employment as an occupational disease because of the nature of the work. PTSD is also included in this list, but the diagnosis does not have to take place after a certain period of employment to be considered an occupational disease. For firefighters to claim PTSD as an occupational disease, the disorder must be diagnosed by a physician or physiologist that results in physical impairment, mental impairment or death.

SB302 creates a presumption that if an educational employee is diagnosed by a physician or psychologist with PTSD that results in physical impairment after they start employment with the school, then the PTSD is presumed to be caused by employment as an educational employee. The bill does not specify how long an employee has to work to make this presumption. Evidence could be brought forward in workers' compensation proceedings by the employer that demonstrates the educational employee participated in conduct or activities outside of employment that posed a significant risk of contracting or developing PTSD. If the workers' compensation proceedings determine the presumption does not apply or that the PTSD is not job-related, the employer's workers' compensation insurance provider must be reimbursed for healthcare costs.

In response to a duplicate bill (SB562) considered during the 2019 legislative session, WCA notes this would change current practice related to PTSD workers compensation claims. Under current law, WCA explains, when an employer denies the relationship between PTSD and a worker's employment, the burden of proof is on the worker, who can attempt to establish the casual relationship with the 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. WCA noted the bill may give rise to additional cases requiring dispute resolution by WCA.

Generally, the risk of developing PTSD depends on the nature of the critical incident, the individual's personality, life history, and events that may occur in the aftermath of the trauma. According to the National Institute of Mental Health, PTSD is a disorder that develops in some people who have experienced a shocking, scary, or dangerous event. Additionally, some people may develop the disorder after a friend or family member experiences danger or harm. After trauma, individuals are affected differently and can have short-term symptoms or symptoms that

begin years afterward. Symptoms may include flashbacks, nightmares, and severe anxiety. The main treatments for PTSD include medications or psychotherapy.

SB302 applies to educational employees who are licensed or unlicensed employees of a school district or a private school. The bill does not include charter school employees. SB302 would apply to teachers, administrative roles, janitors, cafeteria workers, and any other licensed or unlicensed employee in a school. This addition to the Occupational Disease Disablement Law can hinder the state's efforts to recruit educators and other school employees signaling the profession is as dangerous as a police officer or firefighter.

***Secondary Traumatic Stress.*** According to the National Child Traumatic Stress Network, professionals working with traumatized children can experience secondary traumatic stress. Studies show that from 6 percent to 26 percent of therapists working with traumatized populations and up to 50 percent of child welfare workers are at high-risk for secondary traumatic stress or related conditions of PTSD. Additionally, any professional who works directly with traumatized children and is in a position to hear the recounting of traumatic experiences is at risk for secondary traumatic stress. Risk is higher among (1) women, (2) individuals who are highly empathetic by nature or have unresolved personal trauma, (3) individuals who carry a heavy caseload of traumatized children, (4) individuals who are socially or organizationally isolated, or (5) individuals who feel professionally compromised due to inadequate training.

According to Child Trends, a nonprofit and nonpartisan research center, New Mexico and Arizona are tied at 18 percent for the highest rate of children who suffer from three to eight adverse childhood experiences. An adverse childhood experience is a potentially traumatic event that can have negative, lasting effects on health and well-being. These experiences can take place in many different forms, such as physical, emotional, or sexual abuse, parental divorce, or incarceration of a parent or guardian. Teachers frequently address trauma in their classrooms daily by acting as counselors, social workers, and nurses because so many students in New Mexico have adverse childhood experiences.

***Preventative measures.*** The Society of Occupational Medicine attests 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 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.

SB302 does not address prevention of PTSD, however, instead focusing on liability and remedies post-diagnosis. SB302 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 battery, the complainant has the burden of proof to establish (1) that there was a specific intent to make contact with the person by 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 shifts 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, SB302 and its immediate presumption of occupational PTSD for educational employees requires a rebuttal by a preponderance of the evidence 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.

### **TECHNICAL ISSUES**

On pg. 2, within Section B, the sponsor may want to consider striking the words “after the period of employment indicated” or specify how long an employee must be employed before they can claim PTSD.

### **SOURCES OF INFORMATION**

- LESC Files
- NMPSIA
- WCA
- PED

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