

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 5

Introduced by Blood, 3.

Read first time January 05, 2023

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-101.01, Revised Statutes Cumulative Supplement,
- 3 2022; to provide for compensability of mental injuries and mental
- 4 illness resulting from workplace violence; to define a term; to
- 5 harmonize provisions; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-101.01, Revised Statutes Cumulative
2 Supplement, 2022, is amended to read:

3 48-101.01 (1) The Legislature finds and declares:

4 (a) The occupations of first responders are recognized as stressful
5 occupations. Only our nation's combat soldiers endure more stress.
6 Similar to military personnel, first responders face unique and uniquely
7 dangerous risks in their sworn mission to keep the public safe. They rely
8 on each other for survival to protect the communities they serve;

9 (b) On any given day, first responders can be called on to make life
10 and death decisions, witness a young child dying with the child's grief-
11 stricken family, make a decision that will affect a community member for
12 the rest of such person's life, or be exposed to a myriad of communicable
13 diseases and known carcinogens;

14 (c) On any given day, first responders protect high-risk individuals
15 from themselves and protect the community from such individuals;

16 (d) First responders are constantly at significant risk of bodily
17 harm or physical assault while they perform their duties;

18 (e) Constant, cumulative exposure to horrific events make first
19 responders uniquely susceptible to the emotional and behavioral impacts
20 of job-related stressors;

21 (f) Trauma-related injuries can become overwhelming and manifest in
22 post-traumatic stress, which may result in substance use disorders and
23 even, tragically, suicide; and

24 (g) It is imperative for society to recognize occupational injuries
25 related to post-traumatic stress and to promptly seek diagnosis and
26 treatment without stigma. This includes recognizing that mental injury
27 and mental illness as a result of trauma is not disordered, but is a
28 normal and natural human response to trauma, the negative effects of
29 which can be ameliorated through diagnosis and effective treatment.

30 (2) Personal injury includes mental injuries and mental illness
31 unaccompanied by physical injury for an employee who is a first

1 responder, frontline state employee, or county correctional officer if
2 such employee:

3 (a) Establishes that the employee's employment conditions causing
4 the mental injury or mental illness were extraordinary and unusual in
5 comparison to the normal conditions of the particular employment; and

6 (b) Establishes, through a mental health professional, the medical
7 causation between the mental injury or mental illness and the employment
8 conditions by medical evidence.

9 (3) The employee bears the burden of establishing the matters
10 described in subsection (2) of this section by a preponderance of the
11 evidence.

12 (4) Until January 1, 2028, a first responder may establish prima
13 facie evidence of a personal injury that is a mental injury or mental
14 illness if the first responder:

15 (a) Presents evidence that the first responder underwent a mental
16 health examination by a mental health professional upon entry into such
17 service or subsequent to such entry and before the onset of the mental
18 injury or mental illness and such examination did not reveal the mental
19 injury or mental illness for which the first responder seeks
20 compensation;

21 (b) Presents testimony or an affidavit from a mental health
22 professional stating the first responder suffers from a mental injury or
23 mental illness caused by one or more events or series of events which
24 cumulatively produced the mental injury or mental illness which brought
25 about the need for medical attention and the interruption of employment;

26 (c) Presents evidence that such events or series of events arose out
27 of and in the course of the first responder's employment; and

28 (d) Presents evidence that, prior to the employment conditions which
29 caused the mental injury or mental illness, the first responder had
30 participated in resilience training and updated the training at least
31 annually thereafter.

1 (5) Personal injury includes mental injuries and mental illness
2 unaccompanied by physical injury for an employee whose mental injuries or
3 mental illness were caused by workplace violence if such employee
4 establishes, through a mental health professional, the medical causation
5 between the mental injury or mental illness and the workplace violence by
6 medical evidence.

7 ~~(6) (5)~~ For purposes of this section, mental injuries and mental
8 illness arising out of and in the course of employment unaccompanied by
9 physical injury are not considered compensable if they result from any
10 event or series of events which are incidental to normal employer and
11 employee relations, including, but not limited to, personnel actions by
12 the employer such as disciplinary actions, work evaluations, transfers,
13 promotions, demotions, salary reviews, or terminations.

14 ~~(7)(a) (6)(a)~~ The Department of Health and Human Services shall
15 reimburse a first responder for the cost of annual resilience training
16 not reimbursed by the first responder's employer. The department shall
17 pay reimbursement at a rate determined by the Critical Incident Stress
18 Management Program under section 71-7104. Reimbursement shall be subject
19 to the annual limit set by such program under section 71-7104.

20 (b) To obtain reimbursement under this subsection, a first responder
21 shall submit an application to the Department of Health and Human
22 Services on a form and in a manner prescribed by the department.

23 ~~(8) (7)~~ The Department of Health and Human Services shall maintain
24 and annually update records of first responders who have completed annual
25 resilience training.

26 ~~(9) (8)~~ For purposes of this section:

27 (a) County correctional officer means a correctional officer
28 employed by a high-population county whose:

29 (i) Position obligates such employee to maintain order and custody
30 of inmates in a county jail; and

31 (ii) Duties involve regular and direct interaction with high-risk

1 individuals;

2 (b) Custody means:

3 (i) Under the charge or control of a state institution or state
4 agency and includes time spent outside of the state institution or state
5 agency; or

6 (ii) In the custody of a county jail in a high-population county or
7 in the process of being placed in the custody of a county jail in a high-
8 population county;

9 (c) First responder means a sheriff, a deputy sheriff, a police
10 officer, an officer of the Nebraska State Patrol, a volunteer or paid
11 firefighter, or a volunteer or paid individual licensed under a licensure
12 classification in subdivision (1) of section 38-1217 who provides medical
13 care in order to prevent loss of life or aggravation of physiological or
14 psychological illness or injury;

15 (d) Frontline state employee means an employee of the Department of
16 Correctional Services or the Department of Health and Human Services
17 whose duties involve regular and direct interaction with high-risk
18 individuals;

19 (e) High-population county means a county with more than three
20 hundred thousand inhabitants as determined by the most recent federal
21 decennial census or the most recent revised certified count by the United
22 States Bureau of the Census;

23 (f) High-risk individual means an individual in custody for whom
24 violent or physically intimidating behavior is common, including, but not
25 limited to, a committed offender as defined in section 83-170, a patient
26 at a regional center as defined in section 71-911, a juvenile committed
27 to a youth rehabilitation and treatment center, and a person in the
28 custody of a county jail in a high-population county or in the process of
29 being placed in the custody of a county jail in a high-population county;

30 (g) Mental health professional means:

31 (i) A practicing physician licensed to practice medicine in this

1 state under the Medicine and Surgery Practice Act;

2 (ii) A practicing psychologist licensed to engage in the practice of
3 psychology in this state as provided in section 38-3111 or as provided in
4 similar provisions of the Psychology Interjurisdictional Compact;

5 (iii) A person licensed as an independent mental health practitioner
6 under the Mental Health Practice Act; or

7 (iv) A professional counselor who holds a privilege to practice in
8 Nebraska as a professional counselor under the Licensed Professional
9 Counselors Interstate Compact; ~~and~~

10 (h) Resilience training means training that meets the guidelines
11 established by the Critical Incident Stress Management Program under
12 section 71-7104 and that teaches how to adapt to, manage, and recover
13 from adversity, trauma, tragedy, threats, or significant sources of
14 stress; and -

15 (i) Workplace violence means a shooting, hostage situation, act of
16 terrorism, or similar act of violence occurring in the workplace.

17 (10) (9) All other provisions of the Nebraska Workers' Compensation
18 Act apply to this section.

19 Sec. 2. Original section 48-101.01, Revised Statutes Cumulative
20 Supplement, 2022, is repealed.