



June 9, 2023

The Honorable Dave Cortese
Chair, Senate Labor, Public
Employment & Retirement
1021 O Street, Room 6630
Sacramento, CA 95814

**RE: AB 1145 (Maienschein) – Expansion of Special Workers' Compensation Benefits
OPPOSE**

Dear Senator Cortese,

The California Coalition on Workers' Compensation, the California Association of Joint Powers Authorities and the American Property Insurance Association must respectfully **OPPOSE AB 1145**, which creates a new workers' compensation presumption for Post Traumatic Stress Disorder (PTSD) that covers several bargaining units of state psychiatric nurses and social service providers. There is no evidence that normal operation of our workers' compensation system is failing to provide benefits to the workers covered by AB 1145 or that a presumption is needed to secure those benefits. AB 1145 sets aside key protections for taxpayer funded public entities and expands the PTSD presumption without any evidence.

California's workers' compensation system treats psychiatric injuries somewhat differently than physical injuries or illnesses, and that is because the rules acknowledge that psychiatric injury tends to be far more complex in terms of causation. While work can be a stressor in the life of an employee, far more of our lives are lived outside of the workplace and psychiatric injuries are subjective in terms of causation. Because of this, California law requires that "the actual events of employment" be the predominant cause (51%) of psychiatric injury. If the psychiatric injury is the result of violence or a violent event in the workplace, then the threshold is lower (35-40%). California law also protects employers from claims of psychiatric injury if a good faith, nondiscriminatory personnel action (bad review, termination, etc.) was largely responsible for the psychiatric injury. Psychiatric injuries have been repeatedly used as a center of fraud and abuse in California's workers' compensation system, and the protections in existing law are there for a reason. Undermining those protections with a presumption without any evidence of a problem only serves to open the door to abuse and fraud.

California law already contains a presumption for PTSD that applies to certain peace officers and firefighters. This was established by the passage of SB 542 (Stern, 2019) despite a complete lack of data or analysis objectively demonstrating that California's employer-funded system of no-fault workers'

compensation – a system required to be “liberally construed” by judges when a dispute arises – had any problems with respect to these types of claims. The legislature adopted this legislation on the strength of anecdotal claims from the labor unions who sponsored and supported the bill, but the sunset was added to the bill in the Assembly Insurance Committee so that the legislature could collect objective evidence related to the policy and reconsider the situation when sunset required legislative action to reauthorize.

Retired Assemblymember Tom Daly, then Chair of the Assembly Insurance Committee, penned a letter (attached) to the Executive Director of the Commission on Health and Safety and Workers’ Compensation (CHSWC) asking for extensive analysis be completed about this bill and noting that “presumptions should be narrowly tailored on the basis of sound empirical data”. The Commission did attempt to study this issue and even sought public comment on a draft study from the Rand Corporation. The study, which showed significant cost but little in the way of need for a presumption, was ultimately shelved by the Commission.

It is simply premature to propose any expansion of the current presumption until the analysis has been completed on the original legislation. There is no objective basis to evaluate the operation of current law, the need for this expansion, or the impact of stripping away protections for taxpayer-funded public entities. It is clear that AB 1145 would drive up costs for struggling public entities in a time of budget deficits, but it’s not at all clear that a presumption is needed for these workers to fairly access the workers’ compensation system.

For these reasons and more, we respectfully **OPPOSE AB 1145**.

Sincerely,

American Property Casualty Insurance Association
California Association of Joint Powers Authorities
California Coalition for Workers’ Compensation

Cc: Senate Labor, Public Employment & Retirement Committee
Assemblymember Maienschein