

TO: Senate Committee on Economic Development, Housing, and General Affairs

FROM: Agency of Administration, Financial Services Division, Office of Risk Management

DATE: April 30, 2024

RE: PTSD Presumption in H. 55

The Office of Risk Management (“ORM”) respectfully submits this written comment regarding the PTSD presumption language for State employees in some departments pertaining to workers’ compensation coverage (currently on pages 14 to 16, section 12 of draft 5.1 of the bill).

The proposed language in this bill is similar to language in H. 297, which passed the House Committee on General and Housing, but did not pass the Appropriations Committee.

Workers’ Compensation (“WC”) covers employees who “receive a personal injury by accident arising out of and in the course of employment.” See 21 VSA § 618 (a) (1) WC has been in existence in Vermont since 1915. WC has evolved over the century as the workplace has changed and workplace hazards have evolved. WC has been expanded to covers certain occupational diseases, see 21 VSA § 601 (24), and some mental health conditions. See 21 VSA § 601 (11) (J). The overarching purpose of WC today is to ensure that employees injured on the job receive wage replacement and medical treatment in a timely manner. Claims are adjudicated within a relatively fast time frame so employees can access medical treatment and wage replacement benefits promptly.

Vermont State Government employees who claim injuries on the job are covered by the Vermont’s Workers’ Compensation Act. See 21 V.S.A. §§ 601 to 711. All executive, legislative and judicial branch employees are covered by WC plus some quasi-state entities. The Agency of Administration’s Office of Risk Management manages this self-insured program and oversees the third-party administrator that adjusts the WC claims and workplace safety. See 29 VSA § 1401, 1406, 1407 and 1408.

All State employees are eligible to file WC claims for PTSD. As in all other workers' compensation claims, the burden of proof is on the employee to prove the injury or illness occurred in the course and scope of employment. If the claim is found to be compensable according to WC law, then it is accepted.

H. 55 shifts the burden of proof onto the State, as employer, to prove that the PTSD did not occur within the course and scope of employment.

The burden shifting is not necessary as all State employees are currently covered by WC. A bedrock principle of WC is that the employee has to prove that their claim is work related. Putting forth a new bill to include certain groups of employees based on their job classification in a PTSD presumption is not needed. The current workers’ compensation claim administrative law process works as intended. If claims are denied, there is an appeal process. ORM closely monitors all PTSD claims and workplace prevention measures and has submitted reports to the legislature on the topic.

The JFO prepared a fiscal note for H. 297 which can be utilized to analyze H. 55. The JFO estimated the annual costs to be \$530k due to additional PTSD claim payments and additional legal costs.

It is important to note that all State employees experiencing stress or PTSD have full access to State programs administered through the Department of Human Resources such as EAP and mental health counseling through the State’s major medical health insurance benefits.

For the reasons stated above, the Administration does not support this bill.