

CHAPTER 328

LABOR AND INDUSTRY

HOUSE BILL 17-1229

BY REPRESENTATIVE(S) Singer and Becker J., Ginal, Arndt, Liston, Lawrence, Coleman, Exum, Herod, Hooton, Kennedy, Kraft-Tharp, Landgraf, Lebsock, Lontine, Melton, Michaelson Jenet, Mitsch Bush, Pettersen, Rosenthal, Salazar, Van Winkle, Weissman, Young, Duran;
 also SENATOR(S) Cooke and Todd, Aguilar, Court, Donovan, Fenberg, Fields, Garcia, Guzman, Hill, Jahn, Jones, Kagan, Kefalas, Kerr, Martinez Humenik, Merrifield, Moreno, Tate, Zenzinger.

AN ACT

CONCERNING A CLARIFICATION OF WHEN A WORKER MAY BE COMPENSATED FOR A CLAIM OF MENTAL IMPAIRMENT FOR A PSYCHOLOGICALLY TRAUMATIC EVENT UNDER WORKERS' COMPENSATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 8-41-301, **amend** (2)(a); **repeal** (2)(a.5); and **add** (3) as follows:

8-41-301. Conditions of recovery - definitions. (2) (a) A claim of mental impairment must be proven by evidence supported by the testimony of a licensed ~~physician~~ PSYCHIATRIST or psychologist. ~~For purposes of this subsection (2), "mental impairment" means a recognized, permanent disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances.~~ A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, lay-off, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. The mental impairment that is the basis of the claim ~~shall~~ **MUST** have arisen primarily from the claimant's then occupation and place of employment in order to be compensable.

~~(a.5) For purposes of this subsection (2), "mental impairment" also includes a disability arising from an accidental physical injury that leads to a recognized~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~permanent psychological disability.~~

(3) FOR THE PURPOSES OF THIS SECTION:

(a) "MENTAL IMPAIRMENT" MEANS A RECOGNIZED, PERMANENT DISABILITY ARISING FROM AN ACCIDENTAL INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT WHEN THE ACCIDENTAL INJURY INVOLVES NO PHYSICAL INJURY AND CONSISTS OF A PSYCHOLOGICALLY TRAUMATIC EVENT. "MENTAL IMPAIRMENT" ALSO INCLUDES A DISABILITY ARISING FROM AN ACCIDENTAL PHYSICAL INJURY THAT LEADS TO A RECOGNIZED PERMANENT PSYCHOLOGICAL DISABILITY.

(b) (I) "PSYCHOLOGICALLY TRAUMATIC EVENT" MEANS AN EVENT THAT IS GENERALLY OUTSIDE OF A WORKER'S USUAL EXPERIENCE AND WOULD EVOKE SIGNIFICANT SYMPTOMS OF DISTRESS IN A WORKER IN SIMILAR CIRCUMSTANCES.

(II) "PSYCHOLOGICALLY TRAUMATIC EVENT" ALSO INCLUDES AN EVENT THAT IS WITHIN A WORKER'S USUAL EXPERIENCE ONLY WHEN THE WORKER IS DIAGNOSED WITH POST-TRAUMATIC STRESS DISORDER BY A LICENSED PSYCHIATRIST OR PSYCHOLOGIST AFTER THE WORKER EXPERIENCED EXPOSURE TO ONE OR MORE OF THE FOLLOWING EVENTS:

(A) THE WORKER IS THE SUBJECT OF AN ATTEMPT BY ANOTHER PERSON TO CAUSE THE WORKER SERIOUS BODILY INJURY OR DEATH THROUGH THE USE OF DEADLY FORCE, AND THE WORKER REASONABLY BELIEVES THE WORKER IS THE SUBJECT OF THE ATTEMPT;

(B) THE WORKER VISUALLY WITNESSES A DEATH, OR THE IMMEDIATE AFTERMATH OF THE DEATH, OF ONE OR MORE PEOPLE AS THE RESULT OF A VIOLENT EVENT; OR

(C) THE WORKER REPEATEDLY VISUALLY WITNESSES THE SERIOUS BODILY INJURY, OR THE IMMEDIATE AFTERMATH OF THE SERIOUS BODILY INJURY, OF ONE OR MORE PEOPLE AS THE RESULT OF INTENTIONAL ACT OF ANOTHER PERSON OR AN ACCIDENT.

(c) "SERIOUS BODILY INJURY" MEANS BODILY INJURY THAT, EITHER AT THE TIME OF THE ACTUAL INJURY OR A LATER TIME, INVOLVES A SUBSTANTIAL RISK OF DEATH, A SUBSTANTIAL RISK OF SERIOUS PERMANENT DISFIGUREMENT, OR A SUBSTANTIAL RISK OF PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF ANY PART OR ORGAN OF THE BODY.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect July 1, 2018; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to injuries sustained on or after the applicable effective date of this act.

Approved: June 5, 2017