



## 2020 South Dakota Legislature

# House Bill 1142

Introduced by: **Representative** Cwach

1 **An Act to include post-traumatic stress disorder as a compensable injury for**  
 2 **purposes of workers' compensation.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1.** That § 62-1-1 be AMENDED:

5 **62-1-1. Definitions.**

6 Terms used in this title, ~~unless the context otherwise plainly requires,~~ shall mean:

- 7 (1) "Annual earnings," the average weekly wages, computed as provided in §§ 62-4-  
 8 24 to 62-4-28, inclusive, multiplied by fifty-two;
- 9 (2) "Ascertainable loss," a loss becomes ascertainable when it becomes apparent that  
 10 permanent disability and the extent thereof has resulted from an injury and that  
 11 the injured area will get no better or no worse because of the injury;
- 12 (3) "Average weekly wages," the earnings of the injured employee, computed as  
 13 provided in §§ 62-4-24 to 62-4-28, inclusive;
- 14 (4) "Department," the Department of Labor and Regulation created by chapter 1-37;
- 15 (5) "Domestic servant," an employee who performs services in or around a home, which  
 16 pertain to a house, home, household, lawn, garden, or family. The term includes  
 17 baby sitters but does not include an independent contractor;
- 18 (6) "Earnings," the amount of compensation for the number of hours commonly  
 19 regarded as a day's work for the employment in which the employee was working  
 20 at the time of the employee's injury. It includes payment for all hours worked,  
 21 including overtime hours at straight-time pay, and does not include any sum which  
 22 the employer has been accustomed to pay the employee to cover any special  
 23 expense entailed by the employee by the nature of the employment; wherever  
 24 allowances of any character made to an employee in lieu of wages are specified as  
 25 a part of the wage contract, the allowances shall be deemed a part of the employee's  
 26 earnings;

(7) "Injury" or "personal injury," only injury arising out of and in the course of the employment, and except as otherwise provided in § 62-1-7.1, does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence, subject to the following conditions:

(a) No injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of; or

(b) If the injury combines with a preexisting disease or condition to cause or prolong disability, impairment, or need for treatment, the condition complained of is compensable if the employment or employment related injury is and remains a major contributing cause of the disability, impairment, or need for treatment;

(c) If the injury combines with a preexisting work related compensable injury, disability, or impairment, the subsequent injury is compensable if the subsequent employment or subsequent employment related activities contributed independently to the disability, impairment, or need for treatment.

~~The~~ Except as otherwise provided in § 62-1-7.1, the term does not include a mental injury arising from emotional, mental, or nonphysical stress or stimuli. A mental injury is compensable only if a compensable physical injury is and remains a major contributing cause of the mental injury, as shown by clear and convincing evidence. A mental injury is any psychological, psychiatric, or emotional condition for which compensation is sought; and

(8) "Temporary disability, total or partial," the time beginning on the date of injury, subject to the limitations set forth in § 62-4-2, and continuing until the employee attains complete recovery or until a specific loss becomes ascertainable, whichever comes first.

**Section 2.** That a NEW SECTION be added:

**62-1-7.1. Post-traumatic stress disorder—Compensable injury.**

Post-traumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, is a compensable injury for purposes of this title, if:

(1) The disorder is suffered by:

(a) A firefighter;

(b) A law enforcement officer;

- 1           (c) A person who is licensed to provide emergency medical services to a patient  
2           at the scene and during transportation to a medical facility; or  
3           (d) A person who is employed at an emergency public safety answering point  
4           or dispatch center;  
5           (2) The disorder was diagnosed by a psychiatrist; and  
6           (3) There is clear and convincing evidence to demonstrate that the disorder was  
7           acquired as a result of trauma experienced within the scope of the person's  
8           employment.  
9           For purposes of this section, trauma requires an exposure to another's grievous  
10          injury or death.