



THE NEW YORK STATE PUBLIC EMPLOYEES FEDERATION TESTIMONY

Senate Standing Committee on Labor

“The Current State of Workers Compensation and Areas of
Improvement”

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Wayne Spence, President

Good afternoon Chairperson Ramos and other honorable members of the Senate. My name is Wayne Spence and I am the president of the 50,000-member strong New York State Public Employees Federation (PEF). I want to thank you for the opportunity to speak to you about the state of workers compensation in New York and ways to improve upon the current system. Our union is composed of professional, scientific and technical experts who provide critical services to the residents and taxpayers of New York State. Serving as the state's frontline essential workers during the COVID-19 pandemic, my members have risked their lives and those of their families to maintain the continuity and quality of services to New York's most vulnerable citizens. Numerous PEF members tragically lost their lives during the pandemic while performing their jobs. PEF members take a great deal of pride in their work and the care that they provide to clients because they are professionals, and they care about the welfare of their fellow New Yorkers.

While PEF represents the "white collar" members of the state workforce, my members too often sustain injuries while performing their jobs. Whether it is nurses, parole officers, fire protection specialists, mental health professionals or any of our other 3,000 titles, we see the problems with the current workers compensation laws and have several suggestions on ways to improve upon the current system.

MENTAL HEALTH /PSYCHOLOGICAL STRESS COMPONENT

If the COVID-19 pandemic has taught us anything, it is the importance of mental health and the need for individuals to address any mental health concerns they may have. While finding adequate mental health services has been a challenge over the last four years, it is vital for our members to have this appropriate care, especially when the need is related to a workplace event.

Changes need to be made in the workplace and in Workers Compensation law to ensure that workplace support services and workers' compensation coverage is provided for psychological injuries suffered by workers who are assaulted or involved in other traumatic events in the course of their employment, and expand the occupations eligible to file a claim of mental injury premised upon extraordinary work-related stress.

We support S. 6635 by Senator Ramos/A.5745 by Assemblymember Reyes, but also believe it could be further improved by adding some critical elements. This bill would amend the workers' compensation law to expand the occupations eligible to file a claim of "mental injury premised upon extraordinary work-related stress." The current law was amended in 2017 to include some first responder employees, but it only applies to police officers, firefighters, EMTs, paramedics and emergency dispatchers. This bill would make all employees eligible for this benefit. The requirement that stress would have to be greater than what usually occurs in the normal work environment would remain. This unfortunately means that the more stressful a job ordinarily is, the less likely that a worker will be successful in a mental health injury claim.

Many of my members experience on-the-job trauma, including being the subject or witness to a horrific assault or an accident. No other part of the law limits benefits based on the type of job an individual has. A construction worker is not denied benefits due to a fall, even though she or he is involved in an occupation that is considered dangerous and where slips trips and falls are a common injury. In the same way, no worker should be denied benefits because they frequently experience stress on the job.

Specifically, we suggest that in addition to expanding the occupations eligible for mental stress benefits, that the bill include language that would make it easier for any employees in high stress positions to file a claim if one or more of the following have occurred: (a) a verbal assault upon the employee in a manner that created reasonable fear of a physical assault; (b) a physical assault on the employee; (c) an event in which the employee's work-related duties resulted in imminent danger of death or serious physical injury to the employee or another; or (d) the employee was involved in or responded to a work-related event that involves death or serious physical injury.

In 2020, state employees worked over 19 million hours of overtime. Much of this was for nurses and direct care staff at state facilities, Department of Labor staff working to ensure New Yorkers received unemployment benefits, Department of Health scientists working on COVID tests and vaccines, and DOCCS employees working to keep all New Yorkers safe. Overtime use continues to rise for state employees to 20 million hours in 2021 and 22.2 million hours in 2022.

Numerous state employees face “burnout” and this is a major factor for workers leaving state employment. Mandated overtime, out-of-title work and intense pressure have led to over 12,500 state positions being unfilled, causing additional stress on the remaining workers. This law would help some workers who may no longer be able to handle the pressure to get the help they need and remain in their positions. And it will help the State retain skilled and productive workers who are critical to providing services to New Yorkers.

NOTIFICATION BY THE EMPLOYER TO THE AUTHORIZED EMPLOYEE REPRESENTATIVE

While not currently the practice, PEF believes that notification of worker claims to employees’ representatives is essential for unions to better represent their members. This will be critical for injured workers to get the vital information they need to access benefits and have a quicker and more successful return to work.

Right now, PEF has to work through our local Health and Safety committees to attempt to gain this information. Unfortunately, this information is not consistent or readily shared. We believe requiring this information to be shared with workers’ unions will provide valuable information to track injury/illness trends and implement preventative measures to avoid costly claims, as well as help workers get the information they need to receive the benefits they deserve.

DETAILED ACCOUNTING OF WORKERS COMPENSATION REPORTING

In accordance with Section 7 of the Civil Service law, the Department of Civil Service produces an annual report of “workers’ compensation experience for all state agencies.” This report is modeled after a similar report in the early 1990s. However, the current report does not break out by work location for Parole offices, OCFS and OPWDD facilities, agencies who are consistently in the top five for injuries every year. A breakdown of this sort is done for OMH and DOCCS facilities, and has been crucial for helping to identify where health and safety and preventative programs are needed most. While the information can be found in the source data, it’s just not reported out in a usable format in the same way as DOCCS and OMH are.

COVID AND LONG COVID

A year ago, the New York State Insurance Fund (SIF) issue a report on Long COVID and the

impact on the workplace (available at:

<https://ww3.nysif.com/en/FooterPages/Column1/Initiatives/LongCOVID>). This was an important study given the number of our members who were essential workers and potentially suffer from workplace COVID exposures and Long COVID.

SIF's report analyzing its COVID-19 workers' compensation claims to shine a light on Long COVID, a multifaceted syndrome causing new, returning, or ongoing symptoms in people after their initial infection. The report found that almost one-third of all claimants, 31% or 977, suffered or are suffering from Long COVID. In addition, approximately 18% of claimants with Long COVID—about 5% of COVID-19 claimants—have been unable to return to work for more than one year.

According to one expert, there were at least a quarter million workers who were impacted by work-related COVID in the first year of the pandemic before workers' compensation coverage was broadly understood, and who are now time-barred from filing. Statistically, between 20% and 30% of them have long COVID, and those costs are borne by employers, other insurances and union health benefits.

We believe that a reopener window (similar to what was done legislatively for 9/11 workers) to allow employees who were infected with COVID in the first year or so of the pandemic to file their claims. Many of these workers were deemed essential workers and performed their jobs so that others could remain safe, receive the health and mental health care they needed, or receive unemployment benefits so that they could survive financially. PEF also believes that publication and education on the reopener would be needed, along with encouraging workers to file a claim, similar to 9/11 extension.

Thank you for the opportunity to provide you with written testimony today. I hope that you find this information helpful and would be happy to discuss with you in person any questions that you may have on workers compensation as we move into the 2024 legislative session.

Wayne Spence
President