



Senate Transportation, Commerce and Labor Committee  
February 25, 2015  
Ohio Bureau of Workers' Compensation  
Administrator/CEO Stephen Buehrer  
Senate Bill 5

Good Morning Chairman Manning and members of the Senate Transportation, Commerce and Labor Committee. Thank you for the opportunity to provide testimony on Senate Bill 5, legislation to make first responders with post traumatic stress disorder (PTSD) arising from employment without a physical injury eligible for workers' compensation. My name is Steve Buehrer, and I am the Administrator and CEO of the Ohio Bureau of Workers' Compensation (BWC).

BWC's mission is to protect Ohio's workers and employers through the prevention, care and management of workplace injuries and illnesses at fair rates. BWC recognizes the dangerous and honorable work many professions perform and agree with the sponsor and others on the importance of men and woman receiving necessary care and treatment after a traumatic experience. BWC's own mission is centered on getting injured workers back to work and strives to ensure these injured workers not only get back to work but lead a quality life. Therefore we welcome the opportunity to work with the sponsor and stakeholders to take a deeper look and examine all opportunities to provide comprehensive, quality care to these employees. BWC remains an interested party on this legislation, and would like to offer information and clarification on some inaccurate claims that have been made in previous testimony.

**Claim: Prior to 2013 BWC was covering mental health treatment for all employees. SB 5 returns the law to before the Supreme Court's *Armstrong* decision in 2013.**

**Fact:** Current law, Ohio Revised Code 4123.01(C)(1) expressly prohibits allowance of a psychiatric injury unless it has "arisen from an injury or occupational disease sustained by that claimant or from a rape." This committee has heard testimony that up until 2013, BWC was covering mental health treatment for all employees. This is not true. As early as 1931, the Ohio Supreme Court held that an employment-related stress claim was not compensable in the absence of a contemporaneous physical injury. While the requirement of physical injury was not put into the statutes until much later, Ohio has never provided workers' compensation coverage for a "pure" mental illness.

In the *Armstrong* case, *Armstrong* had an allowed workers' compensation claim with allowances for injuries to his back. He requested an additional allowance for PTSD. The question of coverage rested on whether the PTSD arose from *Armstrong's* physical injuries or from witnessing the death of the other driver. The Supreme Court concluded that 1) there was no causal connection between the physical and mental injuries, and 2) that *Armstrong* would have developed PTSD, regardless of his own injuries, because he witnessed the death of a third party. Because *Armstrong's* PTSD did not arise from his own physical injuries, the Court found that PTSD in this case was not a compensable workers' compensation condition. These facts are important because the issue in *Armstrong* was whether or not psychiatric conditions arose out of physical injuries while SB 5 expands workers' compensation to cover mental conditions with no physical injury at all – **this has never been the law in Ohio.**

**Claim: SB 5 will not open the floodgates for claims and BWC has excess funds to pay for it.**

**Fact:** As many of you know, BWC functions as an insurance company and will cover the benefits the General Assembly decides are appropriate for the workers' compensation system. In a nut shell, each year BWC sets rates based on the expected losses to the system. When a new benefit (cost) such as this bill enters the system, the actuaries will plug that expected loss into the rate calculation for the next year. Estimating the impact (cost) of this bill is not an easy exercise. Based on the testimony presented and the language of the bill as drafted, we have reached a reasonable estimate. Our conservative, actuarial and data analysis using the national average of 18% of first responders filing for PTSD, shows it could cost over \$182 million a year for employers with the bulk of that cost falling on public employers. Today, all public entities combined pay approximately \$190 million in total annual premium today. Adding the cost of covering PTSD as proposed in SB 5 could double their rates. Please note, the cost could be even higher than our conservative estimate because we used 18% of the covered parties experiencing PTSD while testimony last week has shown up to 36% reported PTSD cases in other states. There is also an expectation that costs will be even higher for the first year due to the condition being newly compensable under workers' compensation.

On the second point regarding funds, SB 5 will not bankrupt the state insurance fund. But please realize that "excess" funds or net position balances that have provided the rebates cannot be used to pay for a new benefit. BWC is revenue neutral, so when there are increases to the costs of covering a population of injured workers, BWC will set higher premiums to cover those increased costs.

**Claim: SB 5 will not result in a flood of workers' compensation claims because first responders are likely to exhaust private insurance coverage and workers' compensation would simply be a "backstop."**

**Fact:** It is important for the committee to understand, a health plan is not going to cover PTSD or any other injury if it is covered by the workers' compensation system. There are specific statutes (ORC 1751.55 and ORC 3923.36) that allow health insuring corporations, sickness and accident insurers to exclude work-related injuries and occupational diseases from the scope of coverage of their policies. Therefore, BWC would not be a mere backstop but would be the primary and exclusive coverage if SB 5 becomes the law.

Again, BWC supports the treatment of PTSD for all who may be affected by this condition and welcomes the conversation on this topic. We have been researching what others states have done in this area and while some states do allow "pure" mental claims, most have included parameters for requiring that the work stresses causing the mental injury must be "unusual or extraordinary" in comparison to others in similar jobs and that the cause of the mental injury must be "sudden, severe emotional shock traceable to a definite time, place and cause." Additionally, to help with the impact and cost, it may be beneficial to discuss including language limiting the application of the treatment (and the subsequent cost to impacted employers) or considering an amendment that provides if PTSD leads to Permanent and Total Disability, BWC would offset any benefits against other disability and/or retirement payments. These are just a few ideas to ensure those workers who need the treatment receive it, while limiting the impact to the workers' compensation system and the stakeholders it serves today.

BWC appreciates the opportunity to continue working on this issue. I am happy to answer any questions at this time.