



CCM 2014 Testimony

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LABOR & PUBLIC EMPLOYEES COMMITTEE

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The Connecticut Conference of Municipalities (CCM) is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 92% of Connecticut's population. We appreciate the opportunity to testify on bills of interest to towns and cities.

Senate Bill 56 "An Act Concerning Severe Mental or Emotional Impairment and Workers' Compensation Coverage"

Good afternoon, my name is Steve Werbner, Town Manager of Tolland. I am a member of the CCM Board of Directors, and chairman of the CCM Committee on Labor Relations.

CCM **opposes** SB 56 as a new unfunded state mandate on municipalities.

SB 56 would mandate the expansion of workers' compensation coverage to *all* individuals (private and public employees) with an "emotional or mental impairment" as the result of "visually witnessing the death or maiming, or visually witnessing the immediate aftermath of such death or maiming, of one or more human beings...". Although SB 56 identifies certain circumstances by which the mandated benefits are awarded – **the proposal contains no correlation between an award of the proposed mandated benefits with any physical injury or use of deadly force.**

Simply put, SB 56 would allow any municipal employee (a paramedic, a fire marshal, any first responder, a public workers crew member, etc.) – whether on-duty or not – to arrive at a crime scene several hours after such scene was "secured" and be eligible for full wage replacement benefits under the workers' compensation system – at the expense of towns and cities. **The consequences of mandating such benefits would impose a considerable negative impact on local resources – particularly as many towns are managing shifts in state aid and brainstorming new means of efficiencies.** The administrative and legal costs just to manage the claims filed for this new mandate – let alone fully fund such benefits – could be catastrophic for many communities.

The California Experiment

California's experience with mandated mental-mental benefits supports this concern as **"California workers file claims more frequently than workers in other states...The incidence of workers' compensation**

claims...is 22% higher than the national average.”¹ According to the Workers Compensation Research Institute (WCRI) “...California experienced a 430 percent increase from 1980-1986” in mental stress claims.² Furthermore, “the system is vulnerable to the highly litigious practice of relying on adversarial dueling medical experts – one or more experts hired by each party. WCRI research shows that this leads to unnecessarily high litigation costs and delays payments to deserving workers.”³

The experience in California is further illustrative: “although the goal of compensating a physically or mentally disabled worker is sound, certain difficulties arise in compensating workers for mental injuries. These difficulties arise principally from the mental-mental claim category, recognized in California...indeed these factors contribute to the *continuous susceptibility to fraud and malingering in a mental-mental injury claim*. A news article reported that even the highest official of a California labor union stated that the ‘system fosters abuse.’ Moreover, advertising by physicians and attorneys which invites dissatisfied workers to file stress claims has been criticized as fostering fraud....Workers’ compensation fraud is a ‘\$1 billion problem in the state,’ according to one estimate.”⁴

Let me be clear, the dedication and service of our employees, particularly our first responders, is not at issue. What is at question is **whether local property taxpayers – and their hometown budgets – should be mandated by the State to provide special mental-mental benefits** from "witnessing" a crime scene, or its “aftermath” – **without any financial assistance from the State**. If the State deems SB 56 essential – it should pay for it. The State is in a better position to do so than our towns and cities.

CCM opposes SB 56 for the following reasons:

- **SB 56 would mandate a highly subjective and potentially costly, unfunded mandate on towns and cities.** As noted by OFA in similar proposals from years past, the costs of just one emotional stress case could be significant. **The cost of an individual “mental-stress” case** for either partial disability or a permanent total claim could **range from tens of thousands – to over \$1 million dollars for the duration of the claim**, depending on the circumstances.
- **SB 56 is overly broad and would expose municipalities to potential fraud:**
 - **It would allow individuals to receive such special benefits based on a diagnosis by a counselor or therapist** (i.e. psychologist), based on their witnessing an event or viewing a crime scene hours after an event, regardless of whether they were on-duty or not, or required to be at the scene. It would mandate such special benefits as long as the event was “causally connected with the employee's employment.”
 - **“Visually witnessing” is subject to interpretation** and could mean simply viewing photographs or videos of a crime scene, or of the deceased or injured.
 - **The definition of “death” is also subject to interpretation** and could mean someone may not have actually witnessed a person’s last breath but, because an individual died at a later date/time and location (i.e., a hospital) then, that could be considered “witnessing a death.”

¹ Rita Maroney McPeake, *Workers’ Compensation Law*, in *Managing the Private Law Library* 1992, at 401, 412 (PLI Pat., Copyrights, Trademarks, & Literary Prop. Course Handbook Series No 335, 1992).

² “Liability for Employee Grievances: Mental Stress and Wrongful Termination”, Dr. Richard B. Victor. 10-88.

³ Ibid.

⁴ “Reforming the Reform: Mental Stress Claims under California’s Workers’ Compensation System; Aya V. Matsumoto. 6-1-94; Loyola of Los Angeles Law Review.

- **The definition of “maiming” is open to very broad interpretation**, forcing municipal officials to devote considerable time and resources to thwart mental disability fraud, which has proven to not be uncommon.
- **A diagnosis of “mental or emotional impairment,” as proposed in SB 56, is highly subjective** and could overlap with existing symptoms of depression, substance abuse, or other anxiety disorders. SB 56 is also **imprecise as it does not distinguish among the spectrum of mental stress diagnoses** thus, would cover all judgments from acute stress disorders, to post-traumatic stress disorders, to longer-term chronic or delayed onset disorders, essentially creating an open-ended eligibility.
- **Towns and cities already offer health insurance, disability leave, and Employee Assistance Programs (EAPs) to employees suffering from mental or emotional impairments.** These existing benefits provide employees access to counseling, therapy, and other essential services to assist them and their families during difficult periods.
- **SB 56 would strain local administrative, forensic, medical, legal, and financial resources** otherwise devoted to managing other workers’ compensation claims submitted by employees with physical injuries.

SB 56 As A Slippery Slope

- **SB 56 would establish a dangerous precedent of ambiguous standards and would create a “slippery-slope” toward more mandated benefits** for a variety of other circumstance such as “threatening of death” or simply “serious injury” – which is an avenue of compensation our hometowns cannot afford to go down. Does anyone seriously doubt that the language of this proposal, if enacted, would be broadened every few years to the point where employers will be required to provide benefits to employees experiencing general mental stress? Connecticut state statutes are filled with such inch-by-inch laws.

Towns Cannot Afford Another Costly Mandate

There are over 1,200 mandates imposed on towns and cities on the books. Struggling to come out of the worst economy since the Great Depression, municipalities cannot afford another unfunded state mandate. Hometowns across the State have enacted painful budget cuts and are guarding against additional cuts. Deep cuts in services and massive layoffs have occurred in Connecticut’s central cities – with the prospect of additional layoffs on the horizon. **SB 56 would exacerbate the fiscal crisis within municipalities.**

In conclusion, it is imperative that both the policy and cost **implications of turning Connecticut’s workers’ compensation system upside down are very carefully weighed.** As state lawmakers deliberate means of assisting individuals subjected to certain events, it is also important that options outside the insurance system are considered that would ensure the intent of SB 56 is upheld, while not bankrupting town and city halls.

Good intentions can have unintended consequences – as would be the case with SB 56.

CCM urges the Committee to **take no action on SB 56.**

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If you have questions, please contact Robert Labanara, State Relations Manager for CCM, at rlabanara@ccm-ct.org.