



APRIL 2025

# Alaska PTSD Legislative Changes



# Our Presenter

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- Michele is a life-long Alaskan, born in Anchorage and raised in Juneau.
  - She graduated from the University of Oregon School of Law in 1998.
  - Since 2007 her practice has focused exclusively on workers' compensation defense litigation.
  - Her previous legal background includes extensive litigation and courtroom experience in insurance defense and as an Assistant District Attorney for the State of Alaska. She represents statewide and national employers and insurance companies.
  - She is a founding board member of Kids' Chance Alaska
  - She practices before the Alaska Workers' Compensation Board, Alaska Workers' Compensation Appeals Commission, and the Alaska Supreme Court.
  - She is a member of the Workers' Compensation Section of the Alaska Bar Association
  - Michelle is a frequent speaker on work comp issues for clients



# PTSD: Legislative Landscape

- **Who does this impact?**
- **What does it impact?**
- **Where does it apply?**
- **When it is effective?**
- **Why is it important?**

# Alaska PTSD Legislative Changes

Changes to the way PTSD Claims are viewed, handled, brought to resolution.



**Applies to  
Mental Injuries**



**Impacting  
Employers, Payers,  
Injured Individuals,  
Providers, Staff**



**When?  
January 1, 2025**

## **PTSD Claims in Alaska for First Responders**

Let's dig into the changes!

- **Old Standard**
- **New Standard**
- **How do we manage?**
- **How do we get evidence to defend?**
- **Psychological or Psychiatric IME can evaluate PTSD cause**

# Presumption of Compensability

AS 23.30.120

- **The presumption of compensability applies once an employee has established a preliminary link between employment and the injury.**
- **AS 23.30.120(c) provides: Except as provided in AS 23.30.118 the presumption of compensability does not apply to a mental injury resulting from work-related stress.**

# Presumption of Compensability

AS 23.30.010(a) – Applies to physical injuries

- **To establish a presumption under AS 23.30.020(a)(1) that the injury arose out of and in the course of employment, the employee must establish a causal link.**
- **The presumption may be rebutted by a demonstration of substantial evidence that the disability or need for treatment did not arise out of and in the course of employment.**
- **Benefits are payable if the disability, death, or need for medical treatment, if in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.**

# Presumption of Compensability

AS 23.30.010(b) – Applies to mental/mental injuries

- **Compensation and benefits are not payable for mental injury caused by mental stress, unless it is established that**
  - (1) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment; and**
  - (2) the work stress was the predominant cause of the mental injury.**
- **The amount of work stress shall be measured by actual events.**
- **A mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination or similar action taken in good faith by the employer.**

# New Standard for PTSD for First Responders

Beginning 1/1/25 AS 23.30.118 added to the Act

- **AS 23.30.118(a) There is a presumption of compensability for post-traumatic stress disorder if:**
  1. **The employee is or was employed in an occupation listed in (b)(2)**
  2. **While employed or within three years after the last date of the employee's employment, receives a diagnosis by a psychiatrist or psychologist of post-traumatic stress disorder.**
- **AS 23.30.118(b) Presumption may be rebutted by a preponderance of the evidence that the employee's PTSD resulted from factors that were not work related.**

# Who is Covered?

AS 23.30.118(b)(2)

- **Correctional officers;**
- **Emergency medical technicians;**
- **Emergency medical dispatchers;**
- **Firefighters;**
- **Mobile intensive care paramedics licensed under AS 18.08;**
- **Peace officers; and**
- **Employees who are certified under state law to perform emergency medical services;**

# Who is Covered?

AS 23.30.118(c)

Term	Definition
emergency medical services system	means a system that provides for the arrangement of personnel, facilities, and equipment for the effective and coordinated delivery of health care services, including trauma care, under emergency conditions, occurring either as a result of the patient's condition or of natural disasters or similar situations, and that is administered by a statewide network that has the authority and resources to provide effective administration of the system;
provider of emergency medical services	means a person whose occupation or profession is, or has been, the delivery or administration of emergency medical services; a person who has a fiduciary position with, or has a fiduciary interest in, a health activity, facility or other health agency, or a legal or financial interest in the rendering of any component of emergency medical services.”
Or....	“employees who are certified under state law to perform emergency medical services.” It appears broad enough to potentially include home health care workers and medical providers.

## **PTSD Claims in Alaska for First Responders**

How is the presumption triggered?

- **Must be brought within 3 years of last day of employment**
- **Any psychologist or psychiatrist must diagnose PTSD**
- **No requirement for causal link to employment required to trigger presumption**
- **No length of time requirement spent as first responder**

## PTSD Claims in Alaska for First Responders

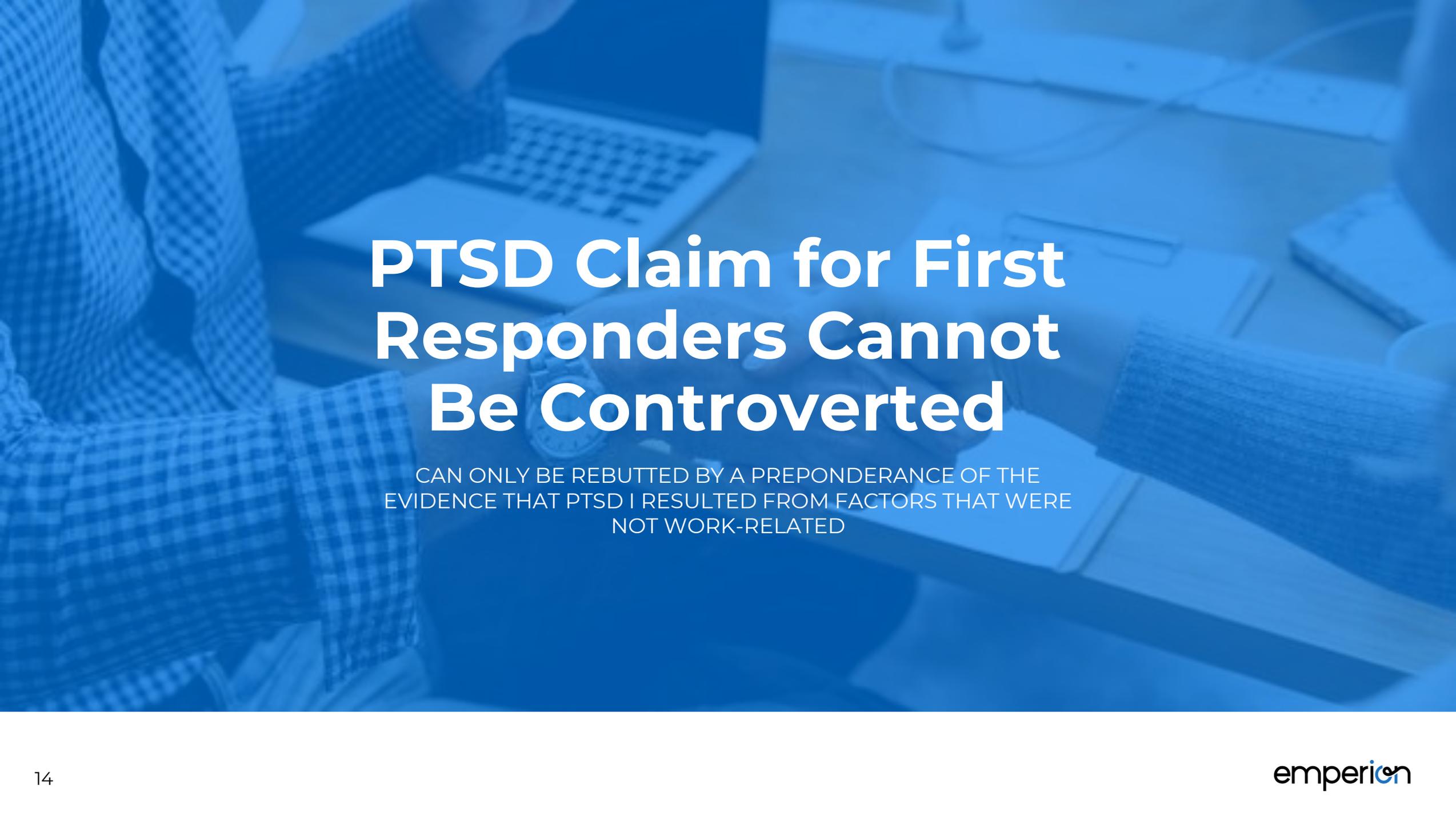
Can the presumption be rebutted?

Normally we rebut the presumption by a demonstration of substantial evidence that the disability or need for treatment did not arise out of and in the course of employment.

What is substantial evidence?

Evidence that if accepted as true, would mean the claim is not compensable.

Usually medical evidence



# PTSD Claim for First Responders Cannot Be Controverted

CAN ONLY BE REBUTTED BY A PREPONDERANCE OF THE EVIDENCE THAT PTSD I RESULTED FROM FACTORS THAT WERE NOT WORK-RELATED

## PTSD Claims in Alaska for First Responders

What is the preponderance of evidence?

- A standard of proof that requires the party with the burden of proof to show that it is more likely than not that their version of events is true.
- More than 50%
- Who decides? The finder of fact.
- This means the presumption cannot be rebutted without going to hearing on the merits and prevailing by a preponderance of evidence.

## PTSD Claims in Alaska

How to defend?

- **How do we get evidence to defend?**
  - **Recorded statement**
  - **Past medical records**
  - **Deposition of employee or others**
- **Psychological or Psychiatric IME can evaluate PTSD cause**

**Presumption will attach for nearly all first responders who get a PTSD diagnosis by a psychologist or psychiatrist within 3 years of employment.**

**No requirement that work caused the PTSD, just that it was diagnosed.**

**How this plays out is yet to be seen.**

# Thank you!

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