

Workers' Comp LAW BLOG

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- Workers' Compensation
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Worth Watching in 2013: Bentley Decision leads to Workers' Comp Reform Bill H. 3147

To borrow a line from the famed 19th century English poet Alfred Lord Tennyson, "Ring out the old, ring in the new." With the introduction of South Carolina House Bill 3147, some legislators plan on doing that very thing.

Proposed H. 3147 was prefiled December 2012 and comes at no real surprise following the South Carolina Supreme Court's recent decision and comments in *Brandon Bentley v. Spartanburg County* and S.C. Association of Counties SIF Opinion NO. 27140. The bill, currently with the Committee on Labor, Commerce and Industry in the South Carolina House of Representatives, takes aim at reducing the threshold for employees to prove stress induced work injuries are compensable. As we predicted in July 2012, the fallout from the Bentley holding is to create a legislative change in existing law S.C. Code Ann. § 42-1-160 by making the sole factor for compensability of "mental-mental" injuries medical causation. The proposed bill strikes the following requirement for compensability of a mental-mental claim:

(1) that the employee's employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment;

In *Bentley*, the Supreme Court failed to find Bentley's claims for psychological injuries of anxiety and depression following his shooting and killing of a suspect compensable because the conditions surrounding the claim were not extraordinary and unusual when compared to his normal working conditions/requirements as a police officer. When determining whether the conditions were extraordinary or unusual, the Court noted unusual and extraordinary conditions refer to conditions to the particular job in which the injury occurs, not to conditions of employment in general. In its decision, the Court noted some jurisdictions have dropped the heightened requirement of an unusual and extraordinary condition from the standard of a mental-mental injury. The Court opined that if South Carolina reformed its legislation, it would be one of five other states with similar statutes not requiring an unusual and extraordinary condition standard.

The Committee and the House now have the task of wrestling with the effects this bill could have on the volume of litigation for mental-mental injuries. Other jurisdictions attempting to tackle this same issue have considered the effects this could have on the flood of litigation for mental-mental injuries with such a low threshold for compensability. We encourage our clients and all business owners to contact their legislative representatives to have their thoughts made known regarding this significant change to the Workers Compensation Act. Stay tuned regarding the status of H. 3147.

About Christian Boesl

Christian is a shareholder and chair of the firm's Employment Practice Group. His practice focus includes both employment law and workers' compensation. Although Christian's practice concentrates in State Court, Federal District Court and the Workers' Compensation Commission, he also maintains an active practice pursuing alternative dispute resolution for his clients. Christian joined Collins & Lacy as a law clerk and stayed on as an attorney after being admitted to the South Carolina Bar. During law school, Christian was an Honor Council Justice, 2002 Moot Court Champion and quarterfinalist in the Herbert J. Weschler National Criminal Law Moot Court Competition.

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