

ASSEMBLY, No. 5770

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 18, 2021

Sponsored by:

Assemblyman BRIAN BERGEN

District 25 (Morris and Somerset)

Assemblyman KEVIN J. ROONEY

District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Provides employment protections for certain medical professionals diagnosed with post-traumatic stress disorder under certain conditions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/1/2021)

1 AN ACT concerning certain medical professionals and post-
2 traumatic stress disorder and supplementing Title 34 of the
3 Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known as the "New Jersey Medical
9 Professional Post-Traumatic Stress Disorder Protection Act."

10

11 2. As used in this act:

12 "Employee" means a medical professional providing health care
13 services to natural persons, including but not limited to a physician,
14 podiatrist, dentist, nurse, optometrist, chiropractor, physical
15 therapist, occupational therapist, pharmacist, psychologist, dietitian,
16 psychiatric social worker or speech therapist.

17 "Employer" means an entity that employs paid medical
18 professionals.

19 "Mental health professional" means a person who provides
20 mental health services and is licensed or otherwise authorized,
21 pursuant to Title 45 of the Revised Statutes, to practice a health care
22 profession that is regulated by one of the following : the State
23 Board of Medical Examiners; the State Board of Psychological
24 Examiners; the State Board of Social Work Examiners; the State
25 Board of Marriage and Family Therapy Examiners; the Alcohol and
26 Drug Counselor Committee; the Professional Counselor Examiners
27 Committee; and the Certified Psychoanalysts Advisory Committee.

28 "Minor" means a person under the age 18 of years.

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30 3. a. An employer shall not discharge, harass or otherwise
31 discriminate or retaliate or threaten to discharge, harass or
32 otherwise discriminate or retaliate against an employee with respect
33 to the compensation, terms, conditions, duties, or privileges of
34 employment on the basis that the employee took or requested any
35 leave related to a qualifying diagnosis of post-traumatic stress
36 disorder. Following a period of leave related to a qualifying
37 diagnosis of post-traumatic stress disorder, an employer shall
38 reinstate an employee whose fitness to return to work has been
39 documented by a licensed physician or licensed mental health
40 professional who is treating the employee to the position and duties
41 held by the employee prior to the leave.

42 b. A diagnosis of post-traumatic stress disorder is qualified
43 under subsection a. of this section if:

44 (1) the diagnosis is made by a licensed physician or licensed
45 mental health professional; and

46 (2) as determined by the licensed physician or licensed mental
47 health professional, the post-traumatic stress disorder arose:

1 (a) as a direct result of the employee experiencing or witnessing
2 a traumatic event during and within the scope of the performance of
3 regular or assigned duties of the employee; or

4 (b) due to vicarious trauma experienced by the employee as a
5 direct result of the performance of regular or assigned duties of the
6 employee.

7

8 4. a. Upon a violation of any of the provisions of section 3 of
9 this act, an employee or former employee may institute a civil
10 action in the Superior Court for relief. All remedies available in
11 common law tort actions shall be available to a prevailing plaintiff.
12 The court may also order any or all of the following relief:

13 (1) an assessment of a civil fine of \$5,000 for the first violation
14 of any of the provisions of section 3 of this act and \$10,000 for each
15 subsequent violation;

16 (2) an injunction to restrain the continued violation of any of the
17 provisions of section 3 or section 4 of this act;

18 (3) reinstatement of the employee to the same position or to a
19 position equivalent to that which the employee held prior to
20 unlawful discharge or retaliatory action;

21 (4) reinstatement of full fringe benefits and seniority rights;

22 (5) compensation for any lost wages, benefits and other
23 remuneration;

24 (6) payment of reasonable costs and attorney's fees.

25 b. An action brought under this section shall be commenced
26 within one year of the date of the alleged violation.

27 c. A private cause of action provided for in this section shall be
28 the sole remedy for a violation of this act.

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30 5. This act is intended to affirm certain rights of employees
31 under the circumstances specified in this act, and shall not be
32 construed as reducing, limiting, or curtailing any rights of any
33 employee provided by law.

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35 6. This act shall take effect immediately.

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STATEMENT

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40 This bill establishes employment protections for certain medical
41 professionals who are diagnosed with certain cases of work-related
42 post-traumatic stress disorder.

43 Under the bill, an employer would be prohibited from
44 discharging, harassing, or otherwise discriminating against an
45 employee, or threatening to do so, with respect to the compensation,
46 terms, conditions, duties, or privileges of employment on the basis
47 that the employee took or requested any leave related to a
48 qualifying diagnosis of post-traumatic stress disorder. The bill also

1 provides that following a period of leave related to a qualifying
2 diagnosis of post-traumatic stress disorder, an employer would be
3 required to reinstate an employee whose fitness to return to work
4 was documented by a licensed physician or licensed mental health
5 professional. Under the bill, reinstatement would be to the position
6 and duties held by the employee prior to the leave.

7 Under the bill, a PTSD diagnosis qualifies if it is made by a
8 licensed physician or licensed mental health professional and as
9 determined by the practitioner, the post-traumatic stress disorder
10 arose:

11 (1) as a direct result of the employee experiencing or witnessing
12 a traumatic event during and within the scope of the performance of
13 regular or assigned duties of the employee; or

14 (2) due to vicarious trauma experienced by the employee as a
15 direct result of the performance of regular or assigned duties of the
16 employee.

17 The bill provides that if an employer violates its provisions, an
18 employee or former employee would be authorized to institute a
19 civil action in the Superior Court for relief. All remedies available
20 in common law tort actions would be available to a prevailing
21 plaintiff. Additionally, the bill provides that a court would be
22 authorized to order any or all of the following relief:

23 (1) an assessment of a civil fine of \$5,000 and \$10,000 for each
24 subsequent violation;

25 (2) an injunction to restrain the continued violation of any of the
26 provisions of the bill;

27 (3) reinstatement of the employee to the same position or to a
28 position equivalent to that which the employee held prior to
29 unlawful discharge or retaliatory action;

30 (4) reinstatement of full fringe benefits and seniority rights;

31 (5) compensation for any lost wages, benefits and other
32 remuneration;

33 (6) payment of reasonable costs and attorney's fees.

34 The bill defines "employee" as a medical professional providing
35 health care services to natural persons, including but not limited to
36 a physician, podiatrist, dentist, nurse, optometrist, chiropractor,
37 physical therapist, occupational therapist, pharmacist, psychologist,
38 dietitian, psychiatric social worker or speech therapist.