QUESTIONS ON FIREFIGHTER CANCER PRESUMPTION LAWS

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FIREFIGHTER CANCER PRESUMPTION LAWS

Some states have expanded access to workers’ compensation or other disability-related benefits for firefighters with cancer by statutorily creating a presumption that the firefighter contracted cancer while performing his or her firefighting duties. In these states, when a firefighter applies for workers’ compensation or other benefits related to their cancer, the firefighter is presumed to be eligible for benefits unless the employer proves that the firefighter’s cancer was not caused by his or her firefighting duties. Without the presumption, a firefighter must first prove that his or her cancer was caused by their firefighting duties before receiving benefits.

ISSUE

This report addresses the following questions related to laws that create a presumption that a firefighter’s cancer was caused by his or her work as a firefighter and thus entitle the firefighter to workers’ compensation or other benefits.

1. How much does providing cancer presumption benefits for firefighters cost?

2. How do nearby states and Michigan fund their presumption benefits?

3. Are workers’ compensation and Second Injury Fund benefits tax exempt?

4. How many firefighters are there in Connecticut?

5. Are there any instances when expert panels are used in workers’ compensation cases?

The Office of Legislative Research is not authorized to issue legal opinions and this report should not be considered one.

HOW MUCH DOES PROVIDING CANCER PRESUMPTION BENEFITS FOR FIREFIGHTERS COST?

Unfortunately, it does not appear that any studies have been able to conclusively estimate the cost of providing cancer presumption benefits to firefighters. In 2014, the National Council on Compensation Insurance (NCCI) reported that enacting
such presumptions would increase workers’ compensation costs, but stated that the extent of the increase was difficult to estimate due to significant data limitations. A 2009 study commissioned by the National League of Cities (NLC) similarly found that limited available data made it impossible to create “a reasonable and supportable estimate of the number of firefighters who qualify for workers’ compensation under a cancer presumption.”

Although neither study conclusively determined the cost of firefighter cancer presumption laws, they did identify several provisions in various states’ laws which could help control costs. Other reports by David B. Torrey, president of the National Association of Workers’ Compensation Judiciary, and Stateline.com have also identified similar provisions. These include provisions that:

1. exclude volunteer firefighters and other emergency response personnel (e.g., EMTs) from coverage;
2. limit coverage to certain specified cancers;
3. limit eligibility based on certain service requirements;
4. require pre-employment physicals;
5. limit post-employment coverage;
6. make coverage prospective, not retroactive; and
7. specify the level of evidence necessary for an employer to rebut the presumption.

**HOW DO NEARBY STATES AND MICHIGAN FUND THEIR CANCER PRESUMPTION BENEFITS?**

Among the northeastern states that allow a presumption for firefighters’ cancer, Maine, Pennsylvania, and Vermont provide benefits through the employer’s workers’ compensation insurance coverage (paid for by the employer). Alternatively, Massachusetts, New York (whose law appears to have expired in 2005), and Rhode Island use the presumption when determining a firefighter’s eligibility for disability retirement benefits. Thus, in these states the benefits are paid through the firefighters’ pension system, which is typically funded through a combination of employee and employer contributions and investment earnings, and only available to professional firefighters.
New Hampshire enacted a presumption law to provide benefits through its workers’ compensation system in 1987, however the state’s Supreme Court ruled the law was an unconstitutional unfunded mandate under the state’s constitution. In 2014, the state created a committee to explore other funding options, but it has not yet taken any further action.

Michigan enacted a presumption law in 2014 and created a “First Responder Presumed Coverage Fund” to fund the benefits provided under the law. However, because the law did not provide an appropriation or funding source for the fund, it is not currently paying any benefits. Table 1 shows the northeastern states’ and Michigan’s presumption laws and their benefit funding sources.

Table 1: Northeastern States’ & Michigan’s Firefighter Cancer Presumption Laws and Funding

<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Benefit Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Connecticut</td>
<td>None</td>
<td>N/A</td>
</tr>
<tr>
<td>Michigan</td>
<td>Public Act 515 of 2014</td>
<td>None. The act created the “First Responder Presumed Coverage Fund” to pay benefits, but did not provide an appropriation or funding source.</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>N.H. Rev. Stat. § 281-A:17</td>
<td>None. The law was found unconstitutional as an unfunded mandate under the state’s constitution. In 2014, the state enacted a law that created a committee to explore establishing a funding mechanism.</td>
</tr>
<tr>
<td>New Jersey</td>
<td>None</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>NY Gen. Mun. Law § 207-KK (expired July 1, 2005)</td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>2011 Act 46</td>
<td>Through workers’ compensation insurance coverage.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>RI Gen. Laws § 45-19.1-3</td>
<td>Through the state’s Municipal Employees’ Retirement System as disability retirement benefits.</td>
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</tbody>
</table>

ARE WORKERS’ COMPENSATION AND SECOND INJURY FUND BENEFITS TAX EXEMPT?

Workers’ compensation benefits are tax exempt. Because a person’s state income taxes are based on the adjustable gross income reported on his or her federal tax return, any workers’ compensation benefits the person received are exempt from state taxes if they are also exempt from federal taxes. According to the IRS, any amounts a person receives as workers’ compensation for an occupational sickness
or injury are fully exempt from federal income taxes if they are paid under a state’s workers' compensation act “or a statute in the nature of a workers' compensation act.” The exemption also applies to survivors’ benefits. However, it does not apply to retirement plan benefits, even if the retirement was caused by an occupational sickness or injury. Thus, it appears that any cancer presumption benefits provided as disability retirement benefits (as in Massachusetts, New York, and Rhode Island) would be taxable.

Under the above IRS explanation, it appears that Second Injury Fund (SIF) benefits are generally tax exempt because they are being provided “in the nature of a workers’ compensation act.” In general, benefits from the fund are paid when an employer is unable, or fails to provide workers’ compensation coverage for an injured employee. In contrast, death or disability benefits paid by towns under the state’s presumption law for firefighters with hypertension or heart disease (CGS § 7-433c) are not tax exempt because they are paid outside of the state’s workers’ compensation law.

**HOW MANY FIREFIGHTERS ARE THERE IN CONNECTICUT?**

According to the [Department of Emergency Services & Public Protection](http://www.despp.com) (DESPP), there were approximately, 26,650 firefighters in the state in 2013-2014. About 4,425 (17%) are professionals and 22,225 (83%) are volunteers.

**ARE THERE ANY EXAMPLES OF EXPERT PANELS USED IN WORKERS' COMPENSATION CASES?**

CGS § 31-298a establishes a medical panel which can be used in complicated occupational lung disease claims. The panel consists of five to 10 physicians who are experts in diagnosing and treating occupational lung diseases and annually recommended for appointment by the American College of Chest Physicians. In occupational lung disease cases with controverted medical issues, the presiding compensation commissioner may choose three members from the panel for assistance. The commissioner must submit interrogatories on the issues to the three members along with whatever evidence and materials the commissioner deems necessary. The panel can also examine the injured employee. The panel’s answers to the interrogatories and its final report must be determined by a majority vote of the three members.

**HYPERLINKS**


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