



THE FIRST RESPONDER LAW FIRM
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Cancer Bill Analysis

Intent: to provide firefighters medical, disability, and death benefits due to occupational cancer without cost to the employee.

Types of cancer covered: bladder; brain; breast; cervical; colon; esophageal; skin, kidney, large intestine; lung; malignant melanoma; mesothelioma; multiple myeloma; Non-Hodgkin's lymphoma; oral cavity and pharynx; ovarian; prostate; rectal; stomach; testicular; thyroid.

Qualifying/limiting factors:

1. Firefighter has been employed by his/her employer for at least 5 previous years;
2. Firefighter has not used tobacco products for preceding 5 years;
3. Firefighter has not been employed in any other position, for the preceding 5 years, which is proven to create a higher risk of any cancer.

"Benefits" as alternative to workers' compensation:

1. Cancer treatment at no cost to the firefighter under employer sponsored health plan. The employer sponsored health plan "may not" require the firefighter to contribute toward any deductible, copayment, or coinsurance amount for treatment of cancer;
2. \$25,000.00 payment upon diagnosis of cancer;
3. Coverage for ten years following the date a firefighter terminates employment so long as qualifying factors apply and the firefighter is not subsequently employed as a firefighter;
4. Qualifying cancer must be considered an illness incurred in the line of duty for purposes of determining leave time and employee retention;
5. Line of duty disability pension and death benefits.
6. Cost of insurance providing these benefits, or provision of these benefits through other means, must be borne solely by the firefighter employer.

Analysis:

1. **Alternative to Work Comp.** Benefits under this law are offered as an alternative to workers' compensation, but firefighters may still seek benefits through the workers compensation if they desire. In some instances monetary compensation may be much more substantial under the Workers' Compensation Act. Any firefighter seeking benefits through the Workers' Compensation Act will not have the benefit of a "presumption", reversing the burden of proof, while benefits under this law appear to be a presumptive entitlement. Additionally, firefighters seeking benefits under the Workers' Compensation Act must understand that there is very limited choice of physicians or control of medical in the work comp system.

2. **Enforcement Mechanism.** There is no specific enforcement mechanism referenced in the new law. As a consequence, the biggest question being asked is how firefighters apply for benefits and where they go to enforce their rights if the employer is not voluntarily complying with obligations or only partially complying with obligations. Since the statute specifically states that “benefits” are intended to be an alternative to workers’ compensation, there is some authority for the assertion that disputes related to alternative benefits may still be under the jurisdiction of the workers’ compensation judges. As an alternative, actions seeking declaratory relief in circuit court may also be viable.
3. **Retroactive, Prospective, or both.** There is a question as to whether the law will have retroactive effect. Since there are provisions that appear to impact the burden of proof, the law may be found to apply to cases even prior to the effective date of 7/1/19 as related to specific entitlements. Substantive entitlement, such as monetary compensation, normally only applies prospectively, but there will be legitimate questions concerning retroactive application until such time as the courts clear this up.
4. **Impact on health insurance premiums.** Since the law anticipates that all expenses related to these cancers will be borne by the employer there will be an issue related to the impact of cancer coverage on health insurance premiums and whether such costs should be excluded from the normal health insurance underwriting equation. This is a very complex area and potential consequences appears not to have been anticipated by the legislature. Arguably no firefighter should have to pay health insurance premiums that include any potential exposure for the 21 enumerate cancers. This may have a substantial impact on reducing health insurance premiums that firefighters currently pay.
5. **Potential Unanticipated Waiver.** Because this law creates new substantive entitlements there is concern that firefighters may unknowingly waive entitlement without understanding the implication for future coverage. This concern is especially heightened where firefighters settle workers’ compensation cases at retirement, and have not yet been diagnosed with one of the covered cancers. The ten years of coverage post retirement mean that waivers may be signed unknowingly and before a diagnosis of a covered condition.

As a firm Bichler/Longo will assist in answering questions for any firefighter related to this legislation without charge. Where necessary Bichler/Longo will enforce the rights of deserving firefighters against recalcitrant employers through appropriate means. Please contact Geoff Bichler with any questions related to this legislation, or to arrange Local training seminars.



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