

ANDRÉ JACQUE

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TO: Members of the Assembly Committee on Workforce Development
FROM: Rep. André Jacque
DATE: Nov. 1, 2017
RE: Assembly Bill 434

Chairman Petryk and Committee Members,

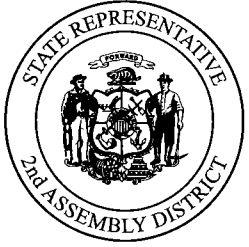
Thank you for holding this hearing and the opportunity to testify before you as the author of AB 434. This common sense, strongly bi-partisan legislation will reduce the barriers faced by public safety first responders (law enforcement, firefighters, or emergency services personnel) with clinically-diagnosed Post Traumatic Stress Disorder (PTSD) so that they can receive the necessary help to heal properly.

While current law provides that an employer is liable for accidents or diseases of its employees if the accident or disease causing injury arose out of the employee's employment, it also requires that for a mental injury to be compensable under the worker's compensation law, the mental injury must result "from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience." However, the day-to-day situations faced by public safety first responders, by the very nature of their occupation, involve death, danger and violence with such frequency that they are much more likely to experience PTSD from the cumulative effect and suffer greatly as a result.

This bill eliminates the "greater dimensions" requirement for coverage of a public safety first responder's work-related PTSD diagnosis, recognizing that while a single event can trigger PTSD, so can repeated exposure to dangerous high stress events (the emotional responses to which may often be very different between any two people). AB 434 also creates a presumption (which is rebuttable by the employer) that a diagnosis of PTSD for a public safety first responder arises out of the employee's employment for purposes of worker's compensation.

PTSD can be treated effectively, and allow those affected to return to protecting and serving the public. It is critical that we meet our obligation to the men and women we have depended on as first responders that are affected by PTSD by giving them access to the treatment and the support they need to recover, both for their own health and those who depend on them.

This legislation is supported by the Wisconsin Professional Police Association, Wisconsin Chiefs of Police Association, Professional Fire Fighters of Wisconsin, Wisconsin State Fire Chiefs



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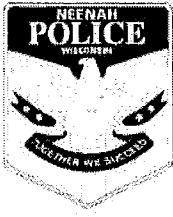
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Association, Wisconsin Sheriffs & Deputy Sheriffs Association, Wisconsin Troopers Association, Milwaukee Police Association, Milwaukee Professional Fire Fighters Association, and Wisconsin State Firefighters Association.

Thank you for your consideration of Assembly Bill 434.



Neenah Police Department

Chief Kevin E. Wilkinson

October 26, 2017

Representative Andre Jacque
Wisconsin Capital
P.O. Box 8952
Madison, WI 53708

RE: AB 434

Representative Jacque and others concerned:

We lost a good cop. It was an unnecessary and sad loss for our community.

In the process of trying to save that officer's career, my eyes were opened to the unfair "Extraordinary Stress" standard that prevents good cops from getting compensable help for the mental injuries they incur in service to us all.

That standard must change.

In my research on this issue I have interviewed a number of officers with heartbreaking stories of being abandoned with their injury. We treat officers' back injuries much more compassionately than their psychological injuries. That's shameful.

I have been a passionate voice advocating for change in this arena among the Wisconsin Chiefs of Police Association, the Wisconsin Police Executive Group, our city's Workers' Compensation insurer, my local representatives in the legislature, and even policy makers in other states. I have a thorough grasp of both sides of the issue.

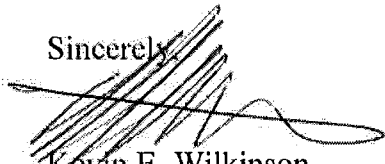
I salute and applaud the authors and signers of AB 434 for bringing this open sore to lawmakers for healing. I'll be frank: the present language of the bill is not palatable to many of the concerned entities because it doesn't draw clear lines to dissuade malingering or adequately define the threshold for diagnoses.

Oct 26, 2017

But it's a good bill that addresses a great need. With a bit of tweaking and massaging by clear-thinking lawmakers, it can become a passable bill that stops the **abandonment of hurting cops and other public safety professionals**. It has strong potential to prevent public servant suicide deaths.

I am willing and available to assist you in this effort however I can.

Sincerely,



Kevin E. Wilkinson
Chief of Police

c: Representatives Allen, Considine, Anderson, Ballweg, Berceau, Brostoff, Doyle, Genrich, Horlacher, Ohnstad, Sargent, Skowronski, C. Taylor, Tussler, and Rohrkaste

Senators Wanggaard, Bewley, and Roth

Police Chiefs Leck and Coughlin

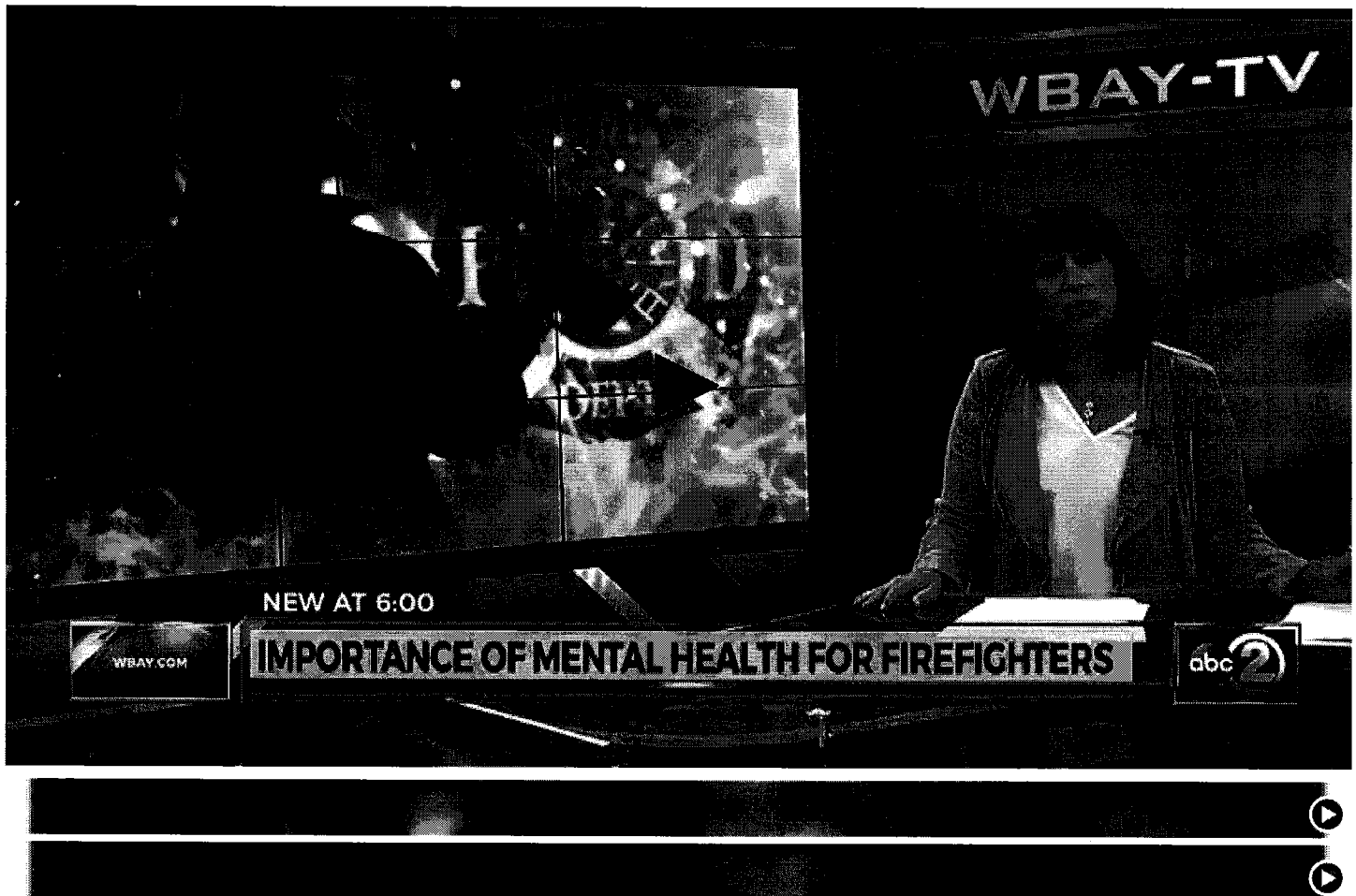
NEENAH'S GUARDIANS

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Wisconsin Fire Chiefs Conference address the importance of mental health for firefighters



By Cearron Bagenda | Posted: Fri 4:42 PM, Jun 23, 2017 | Updated: Fri 7:35 PM, Jun 23, 2017

GREEN BAY, Wis. Post-traumatic stress disorder is generally associated with members of the military, but it can also happen to firefighters.

The Wisconsin Fire Chiefs Conference addressed the importance of mental health and its effects on firefighters across the state on Friday.

Chief Bobby Halton says its important firefighters express how they feel and ask for help.

"A diseased brain and a diseased heart look exactly the same on a medical exam; it's a process where the brain is changed just like the heart is changed during heart disease or during cancer. We're trying to teach people that mental health issues are like being sick," said Halton, Keynote Speaker and Editor in Chief of Fire Engineering Magazine.

Annually there are about 100 firefighter deaths in the line of duty, but suicide is responsible for nearly three times that amount.

"I've had some suicides in areas of the state, close to us geographically and we just aren't very honest and you'll see phrases like 'unexpectedly died,' we just need to be more honest," said Jon Cohn, 1st Vice President of the Wisconsin State Fire Chiefs Association.

A total of 442 fire chiefs registered for this year's conference, all of the workshops throughout the weekend will be related one way or another to health and well-being.

Cohn says firefighters are often seen as heroes but the stigma has to be removed.

"We are very macho, brave industry and we need to break that silence and ensure our members that it's okay to come forward, we're all struggling, but if you are struggling we want to get you help to get back into the right frame of mind," Cohn added.

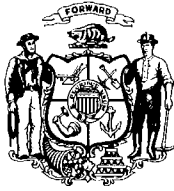
"We do know that what we do as firefighters has a cost, has a price and we need to do a much better job of helping firefighters deal with being firefighters," said Halton.

The conference also addressed cancer rates in fire fighters. About 20% of the general population will get some type of cancer, but for firefighters that number is 60%.

A study done by the University of Illinois Fire Service Institute is helping fire chiefs understand how to better protect their crew from harmful toxins that may cause cancer. Non-organic materials such as plastic will burn at higher temperatures, which expose firefighters to toxic chemicals.

"When our body temperatures go up 5 degrees, our absorption into our body increases by 400 percent so our bodies become sponges to these now more deadly chemicals that are available in our home, and it's very early, but you have to believe there's a connection," says Cohn.

Cohn says some recommendations for the fire departments include providing baby wipes to help remove smoke residue and washing equipment and gear in a timely manner.



Van H. Wanggaard

Wisconsin State Senator

Testimony on Assembly Bill 434

Thank you Mr. Chairman and committee members for today's hearing on Assembly Bill 434.

The job duties of a first responder is not one with which most people can relate. They are under immense pressure and public scrutiny at all times. I can tell you first hand, first responders leave home every day wondering if they will return to their loved ones. They charge headfirst into dangerous conditions, face dramatic and traumatic situations, and are expected to perform perfectly every time.

If they don't perform perfectly, they risk public backlash, intense media scrutiny, or firing from a position they love. Sometimes, even if they do everything right, they face injury, mental illness, or even death.

This is the uncomfortable reality that first responders face every day. While some people can mentally handle these situations, for others, the pressure may manifest into Post-Traumatic Stress Disorder, or PTSD. Post-Traumatic Stress Disorder is a real problem, and is not something that anyone wishes to develop.

The stress and pressure placed on public safety employees is, frankly, different than most other professions. Unfortunately, Wisconsin's workers' compensation law does not make a distinction between the role of a banker, small business owner, retail clerk, or public safety employee. All employees are expected to handle the "day-to-day strain" on their duties. While this is a good idea in theory, the reality is the day-to-day strain of a first responder is more likely to lead to PTSD than that of a typical worker.

It is time that Wisconsin's workers' compensation law reflect this reality. AB 434 specifies a public safety employee does not have to prove a diagnosis of PTSD is the result of greater than the day-to-day stress of the job itself to qualify for workers' compensation.

I recognize that it is possible that some people could try to take advantage of this change for their own benefit. That is not my intention. Potential bad actors should not be reason to stop this necessary reform. If the committee believes it should tighten the language to prevent abuse, I am open to those discussions.

As more is known about mental illness and PTSD it is important that legislators update our laws to reflect that knowledge. Our first responders take care of us when we are in need, and we should do the same.

Serving Racine and Kenosha Counties - Senate District 21



Written Testimony of:

Jim Palmer, Executive Director
WISCONSIN PROFESSIONAL POLICE ASSOCIATION

Before the:

Assembly Committee on Workforce Development
WISCONSIN STATE LEGISLATURE

November 1, 2017

Mr. Chairman and Distinguished Members of the Committee:

Representing nearly 10,000 members from more than 300 local association affiliates, the Wisconsin Professional Police Association is the state's largest law enforcement group. Our mission is to protect and promote public safety, as well as the interests of the dedicated men and women that serve to provide it. In that vein, we offer this written testimony in **SUPPORT of Assembly Bill 434**, which would establish a presumption for the purposes of worker's compensation that a diagnosis of Post-Traumatic Stress Disorder (PTSD) in a public safety employee arises out of their employment.

When PTSD was first recognized as a distinct illness by the American Psychiatric Association in 1980, the diagnosis was viewed with considerable skepticism. Unlike a physical injury that is readily identifiable, the concept of a mental illness stemming from occupational hazards and events was viewed by some as amounting to less than an exact science.

In the midst of this new controversial classification and out of concern that workers compensation claims on the basis of PTSD would unduly burden taxpayers, courts and legislatures throughout the nation established strict parameters designed to limit what they anticipated to be a surge of stress related workplace claims.

The Wisconsin Supreme Court did just that when in 1974 when it decided the case of *School District No. 1 v. Department of Industry, Labor & Human Relations*. In that case, the court held that in order for an employee's mental injury to be compensable under our worker's compensation laws, the employee must show that the mental injury was caused by unusual stress of greater dimensions than the day-to-day emotional strain tension experienced by similarly-situated employees. In arriving at this decision on a case involving a high school guidance counselor that had alleged acute anxiety after discovering a note submitted by students requesting her dismissal, the court established a longstanding precedent that has been adversely applied to law enforcement officers and other first responders following a wide variety of extraordinarily traumatic occupational events, such as officer-involved

shootings, brutal attacks, and a wide variety of death and depravity not fit for description within these remarks.

In the last few decades, however, the medical community's understanding and acceptance of PTSD has changed dramatically. The diagnosis and treatment of PTSD is now well-established, and, according to the U.S. Department of Veterans Affairs, "the PTSD diagnosis has filled an important gap in psychiatric theory and practice." In short, the medical community's firmly recognizes PTSD and knows how to diagnose and treat those afflicted with this disorder in ways it was unable to 30 years ago.

While most people exposed to traumatic events do not develop PTSD, studies have indicated that the illness is more pervasive amongst law enforcement officers, despite the fact that they are trained to respond nonemotionally. According to the American Psychiatric Association, included in the list of symptoms for PTSD are difficulty concentrating, hypervigilance, irritability and outbursts of anger, and the tendency to exhibit exaggerated responses. The adverse consequences of PTSD for law-enforcement officers are increased rates of divorce, alcoholism, and suicide, to name a few. PTSD can pose significant risks individual officers, their families, and communities they serve as well.

Fortunately, more states have amended their worker's compensation laws to recognize PTSD as compensable injuries when they are triggered by horrific occupational events. Currently, at least 32 states have laws that permit first responders to file worker's compensation claims on the basis of PTSD without having to demonstrate an accompanying physical injury. In that context, AB 434 not only reflects the evolution of how PTSD is viewed by medical practitioners throughout the country, but by public policymakers as well. Indeed, the U.S. Department of Veterans Affairs even covers PTSD services to members of the armed forces that completed active military service, regardless of whether or not that service was performed in a combat zone.

While it is anticipated that there will be those that will raise concerns regarding some notion of increased costs associated with this legislation, as indeterminate as they may be, it's worth noting that those same implications could be applied to any and all compensable injuries covered under our worker's compensation laws. The fact remains, however that Wisconsin, like most states has wisely recognized in the past that the employees in certain high-risk professions are do some degree of special consideration when the injuries they sustain in the performance of their work are unique to that profession. Such is clearly the case with PTSD.

It also bears mentioning that evidence exists to indicate that the concerns about cost increases related to this kind of legislation are overblown. For example, since Minnesota extended the coverage afforded under its worker's compensation statutes to include PTSD in late 2013, the impact on the state's public-sector worker's compensation programs within that state appears to have been relatively modest, at about 1%, according to the League of Minnesota Cities Insurance Trust.

Medical community and public policymakers across the United States have exhibited a growing recognition of PTSD and of the obligation to take care of those that incur this devastating mental injury in the course of their service to their communities. AB 434 reflects the value that we ought to place in that pre-eminent form of public service and in taking care of those after they have suffered in their service to protect us. As such, we respectfully request that this committee vote in support of this measure as soon as it may be possible to do so.

Thank you.



Milwaukee Professional

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Vice-President
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Secretary-Treasurer
MICHAEL E. TORPY

November 1, 2017

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Representative Murphy, Representative Ripp, Representative Allen, Representative
Katsma, Representative Kulp, Representative Brooks, Representative Brandjten,
Representative Snyder, Representative Billings, Representative Spreitzer,
Representative Reimer, Representative Ohnstad, Representative Crowley

Assembly Bill 434

Dear Committee Members,

It is my privilege to testify today in **support** of AB 434 pertaining to the recognition of the presumption of Post Traumatic Stress. This legislation will be the foundation, throughout the state of Wisconsin, aiding and assisting our first responder professionals going forward.

As you can see from the attached information, several states as well as provinces in Canada, have already passed legislation, recognizing this critical condition. The International Association of Fire Fighters has recently opened its' Center of Excellence, see attached, in order to address the multiple issues facing fire fighters across the northern hemisphere.

As many of you know, it has been a staple in the professional careers of first responders that ones physical condition has been paramount in providing the life saving and protective services the constituency of the entire State of Wisconsin has come to know and expect. Thankfully, along with this legislation, ones mental health and condition is equally, if not more, important in providing these same services.

Over the years, the Post Traumatic Stress our members deal with daily has had a profound impact. Not only on the members themselves, but on the family members who sacrifice daily to allow their loved ones to give of themselves in public service. It has been challenging, to say the least, for members who know that they are struggling with issues related to PTS to seek the help that is necessary for a myriad of reasons. Admitting that one might actually be suffering from PTS is the

first hurdle and this legislation clearly allows the accessibility to seek assistance. The International Association of Fire Fighters' recognition of this and pursuing a fire fighter specific brick and mortar institution has availed the accessibility this legislation provides for treatment of said PTS. Furthermore, PTS gone unrecognized, untreated or simply ignored leads to deeper issues such as substance abuse and self treatment. Sadly, PTS has lead to an extraordinary increase of suicide throughout our professions. Personally, throughout my career, I have had three of my members lost to suicide. The despair that has led our brothers and sisters to this end stage leaves gaping holes within our professional families. And yes, we do consider one another family!!! It leaves us questioning why we didn't recognize the challenges. What could we have done differently? How could we have helped?

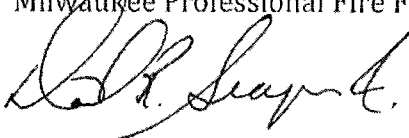
The choices made by our fire fighters, police officers and emergency medical professionals to publicly serve our communities is a noble one. We do not ask for special recognition or to be termed "heroes." All we want is to give of ourselves to those most in need. The burden of seeing what we see, doing what we do and coping with what we cope with over the course of a career can be daunting. Speaking specifically to the City of Milwaukee and the Milwaukee Fire Department, recognition of these issues has been a driving force for attention. The City of Milwaukee offers a comprehensive Employee Assistance Program while the Milwaukee Fire Department has stood up the IAFF Peer Support Team. I am extremely appreciative to both entities, allowing for an opportunity to address the challenging issues that face our members. However, this might not be enough for some. Passage of this legislation would allow for our first responders to address the challenges and successfully treat the conditions that may arise. I am going to make a bold statement, one that I hope is appreciated by committee members present as well as by the entire state legislature:

PASSAGE OF THIS LEGISLATION WILL SAVE THE LIVES OF OUR FIRST RESPONERS IN WISCONSIN!!!!

The State of Wisconsin has a rich tradition in recognizing the physical hazards and perils that face our first responders such as Cancer, Infectious Disease, Heart and Lung Disease. Fortunately, the state has seen fit to recognize the mental stresses and hazards that we also meet daily with this bill before you. I thank you for your time and consideration as you ponder the passage of this bill. I can't express enough my appreciation for the introduction of this bill and look forward to it becoming state law.

Respectfully,

David R. Seager, Jr. – President
Milwaukee Professional Fire Fighters Association



Presumptive Disability Law in Maine

CODE PART:

Maine Revised Statutes
Title 39-A: WORKERS' COMPENSATION
Chapter 7: PROCEDURES

Maine Legislative Website

DESCRIPTION:

Sec. 328.

Cardiovascular injury or disease and pulmonary disease suffered by a firefighter or resulting in a firefighter's death

Cardiovascular injury or disease and pulmonary disease suffered by a firefighter or resulting in a firefighter's death are governed by this section.

1. Firefighter defined. For the purposes of this section, "firefighter" means an active member of a municipal fire department or of a volunteer firefighters association if that person is a member of a municipal fire department or volunteer firefighters association and if that person aids in the extinguishment of fires, regardless of whether or not that person has administrative duties or other duties as a member of the municipal fire department or volunteer firefighters association.
2. Presumption. There is a rebuttable presumption that a firefighter received the injury or contracted the disease arising out of and in the course of employment, that sufficient notice of the injury or disease has been given and that the injury or disease was not occasioned by the willful intention of the firefighter to cause self-injury or injury to another if the firefighter has been an active member of a municipal fire department or a volunteer firefighters association, as defined in Title 30-A, section 3151, for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and if:
 - a. The disease has developed or the injury has occurred within 6 months of having participated in fire fighting, or training or drill that actually involves fire fighting; or
 - b. The firefighter had developed the disease or had suffered the injury that resulted in death within 6 months of having participated in fire fighting, or training or drill that actually involved fire fighting.

Sec. 328-A.

Communicable disease contracted by emergency rescue or public safety worker

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
 - a. "Body fluids" means blood and body fluids containing visible blood and other potentially infectious materials, as defined in a regulation of the Occupational Safety and Health Administration, 29 Code of Federal Regulations, 1910.1030 (2001). For purposes of potential transmission of meningococcal meningitis or tuberculosis, "body fluids" includes respiratory, salivary and sinus fluids, including droplets, sputum and saliva, mucus and other fluids through which infectious airborne organisms can be transmitted between persons.
 - b. "Corrections officer" has the same meaning as in Title 25, section 2801-A, subsection 2.
 - c. "Emergency medical services person" means a person licensed as an emergency medical services person under Title 32, chapter 2-B who is employed by, or provides voluntary service to, an ambulance service as defined in Title 32, section 83 or a nontransporting emergency medical service as defined in Title 32, section 83.
 - d. "Emergency rescue or public safety worker" means a person who:
 1. Is a firefighter, emergency medical services person, law enforcement officer or corrections officer; and
 2. In the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis or tuberculosis.
 - e. "Employer" includes an entity for which a person provides volunteer services.
 - f. "Firefighter" means an active member of a municipal fire department or a volunteer fire association as defined in Title 30-A, section 3151.

- g. "Hepatitis" means hepatitis A, hepatitis B, hepatitis C or any other strain of hepatitis generally recognized by the medical community.
 - h. "High risk of occupational exposure" means a risk that is incurred because a person subject to the provisions of this section, in performing the basic duties associated with that person's employment:
 - 1. Provides emergency medical treatment in a nonhealth-care setting where there is a potential for the transfer of body fluids between persons;
 - 2. At the site of an accident, fire or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;
 - 3. Engages in the pursuit, apprehension and arrest of persons suspected of violating the law and, in performing such duties, risks exposure to body fluids; or
 - 4. Is responsible for the custody and physical restraint, when necessary, of prisoners or inmates within a prison, jail or other criminal detention facility or while on work detail outside the facility or while being transported and, in performing such a duty, risks exposure to body fluids.
 - i. "Law enforcement officer" has the same meaning as in Title 25, section 2801-A, subsection 5.
 - j. "Occupational exposure," in the case of hepatitis, meningococcal meningitis or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.
2. Presumption. There is a rebuttable presumption that an emergency rescue or public safety worker who contracts hepatitis, meningococcal meningitis or tuberculosis has a disease arising out of and in the course of employment, that sufficient notice of the disease has been given and that the disease was not occasioned by the willful intention of the emergency rescue or public safety worker to cause self-injury or injury to another if the emergency rescue or public safety worker complies with the requirements of subsections 3 to 5.
3. Written verification. In order to qualify for the presumption set forth in subsection 2, an emergency rescue or public safety worker must sign a written affidavit declaring that, to the best of the person's knowledge and belief:
- a. In the case of a medical condition caused by hepatitis, the person has not:
 - 1. Been exposed, through transfer of body fluids, to any person known to have sickness or medical conditions derived from hepatitis outside the scope of the person's employment as an emergency rescue or public safety worker;
 - 2. Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with the person's employment as an emergency rescue or public safety worker, or received any blood products for the treatment of a coagulation disorder;
 - 3. Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control and Prevention or the Surgeon General of the United States, or had sexual relations with a person known by the emergency rescue or public safety worker to have engaged in such unsafe sexual practices or other high-risk behavior; or
 - 4. Used intravenous drugs not prescribed by a physician.
 - b. In the case of meningococcal meningitis, in the 10 days immediately preceding diagnosis the person was not exposed outside the scope of the person's employment as an emergency rescue or public safety worker to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease.
 - c. In the case of tuberculosis, the person has not been exposed, outside the scope of the person's employment as an emergency rescue or public safety worker, to any person known by the emergency rescue or public safety worker to have tuberculosis.
- A person who has tested negative for hepatitis or tuberculosis at the time of employment or during employment as an emergency rescue or public safety worker may satisfy the affidavit requirement in paragraph A, subparagraph (2) or paragraph C by making the required declaration with respect to the period of time since the person's last negative test for hepatitis or tuberculosis, respectively.
4. Required medical tests; preemployment physical. In order to be entitled to the presumption set forth in subsection 2:
- a. An emergency rescue or public safety worker, at the time of or during employment as an emergency rescue or public safety worker and prior to diagnosis, must have undergone standard, medically acceptable tests for evidence of the disease for which the presumption is sought or evidence of the medical conditions derived from the disease, which tests failed to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis and

- does not apply to an emergency rescue or public safety worker employed or serving in that capacity on the effective date of this section; and
- b. On or after the effective date of this section, the emergency rescue or public safety worker has undergone a preemployment physical examination that tested for and failed to reveal any evidence of hepatitis or tuberculosis if the person's employer requires such preemployment physical examination and tests.
5. Immunization. Whenever any standard, medically recognized vaccine or other form of immunization or other prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices for the Centers for Disease Control and Prevention, an emergency rescue or public safety worker may be required by the worker's employer to undergo the immunization or other prophylaxis unless the worker's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the worker's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety worker to undergo such immunization or other prophylaxis disqualifies the worker from the benefits of the presumption.
 6. Record of exposures. To the extent required by any state or federal law or regulation:
 - a. An employer shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety worker in its employ to the diseases described in this section and shall immediately notify the employee of that exposure; and
 - b. An emergency rescue or public safety worker shall file an incident or accident report with the worker's employer of each instance of known or suspected occupational exposure to hepatitis, meningococcal meningitis or tuberculosis.
 7. Liability if services performed for more than one employer. If an emergency rescue or public safety worker was employed by more than one employer, the employer in whose employ the person was last injuriously exposed to the risk of the disease contracted and the insurer on the risk at the time of that last exposure, if any, are the only entities liable for the disease.
 8. Effect of presumption on life and disability insurance coverage. The presumption set forth in subsection 2 does not apply in determining eligibility for life or disability benefits unless otherwise provided in the insurance contract.
 9. Effect of presumption on disability retirement. The presumption set forth in subsection 2 is effective for purposes of determining whether a disability is work-related for purposes of determining eligibility for disability retirement in the Maine Public Employees Retirement System. This presumption does not affect any eligibility requirement other than the requirement that the disability be work-related.

Sec. 328-B.

Cancer suffered by a firefighter

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.
 - a. "Cancer" means a cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, breast, testicular, genitourinary, liver or prostate systems or that may result from exposure to heat, radiation or a known or suspected carcinogen.
 - b. "Employed" means to be employed as an active duty firefighter or to be an active member of a volunteer fire association with no compensation other than injury and death benefits.
 - c. "Firefighter" means a municipal firefighter as defined in Title 30-A, section 3151, subsection 2 or a volunteer firefighter as defined in Title 30-A, section 3151, subsection 4.
2. Presumption. If a firefighter who contracts cancer has met the requirements of subsection 3, there is a rebuttable presumption that the firefighter contracted the disease arising out of and in the course of employment as a firefighter, that sufficient notice of the disease has been given and that the disease was not occasioned by the willful intention of the firefighter to cause the disease.
3. Required medical tests. In order to be entitled to the presumption in subsection 2, during the time of employment as a firefighter the firefighter must have undergone a standard, medically acceptable test for evidence of the cancer for which the presumption is sought or evidence of the medical conditions derived from the disease, which test failed to indicate the presence or condition of cancer. This subsection does not apply to a firefighter who is employed on the effective date of this section.
4. Liability if services performed for more than one employer. If a firefighter who contracts cancer and qualifies for the presumption under subsection 2 was employed by more than one employer, the employer of the firefighter and the insurer of that employer at the time of the last exposure to the risk of the cancer are the only persons liable under this Part.

5. Retired firefighters. This section applies to a firefighter who is diagnosed with cancer within 20 years of the firefighter's last active employment as a firefighter.

Sec. 201. Entitlement to compensation and services generally

Sec. 201, sub-section 3-A. Mental injury caused by mental stress. Mental injury resulting from work-related stress does not arise out of and in the course of employment unless:

- A. It is demonstrated by clear and convincing evidence that:
 1. The work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and
 2. The work stress, and not some other source of stress, was the predominant cause of the mental injury.

The amount of work stress must be measured by objective standards and actual events rather than any misperceptions by the employee; or

- B. The employee is a law enforcement officer, firefighter, corrections officer or emergency medical services worker and is diagnosed by an allopathic physician or an osteopathic physician licensed under Title 32, chapter 48 or chapter 36, respectively, with a specialization in psychiatry or a psychologist licensed under Title 32, chapter 56 as having post-traumatic stress disorder, in which case the post-traumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment. This presumption may be rebutted by clear and convincing evidence to the contrary. For purposes of this paragraph, "law enforcement officer," "firefighter," "corrections officer" and "emergency medical services worker" have the same meaning as in section 328-A, subsection 1.

A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer.

Presumptive Disability Law in Nebraska

CODE PART:

Nebraska Revised Statutes - <http://nebraskalegislature.gov/laws/browse-statutes.php>

Chapter 35 Fire Companies and Fire Fighters

Section 35-1001 Death or disability as a result of cancer; prima facie evidence.

Chapter 18 Cities and Villages; Laws Applicable to All

Section 18-1723. Firefighter; police officer; presumption of death or disability; rebuttable.

Section 48 Labor

Section 48-101.01 Mental injuries and mental illness; first responder; compensation; when.

Nebraska Legislative Website

DESCRIPTION:

35-1001. Death or disability as a result of cancer; death or disability as a result of certain diseases; prima facie evidence.

1. For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of cancer, including, but not limited to, cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, or prostate systems, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of cancer, (b) such firefighter or firefighter-paramedic was exposed to a known carcinogen, as defined on July 19, 1996, by the International Agency for Research on Cancer, while in the service of the fire department, and (c) such carcinogen is reported by the agency to be a suspected or known cause of the type of cancer the firefighter or firefighter-paramedic has, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.
2. For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant *Staphylococcus aureus*, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant *Staphylococcus aureus*, and (b) such firefighter or firefighter-paramedic has engaged in the service of the fire department within ten years before the onset of the disease, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.
3. The prima facie evidence presumed under this section shall extend to death or disability as a result of cancer as described in this section, a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant *Staphylococcus aureus* after the firefighter or firefighter-paramedic separates from his or her service to the fire department if the death or disability occurs within three months after such separation.
4. For purposes of this section, blood-borne infectious disease means human immunodeficiency virus, acquired immunodeficiency syndrome, and all strains of hepatitis.

18-1723. Firefighter; police officer; presumption of death or disability; rebuttable.

Whenever any firefighter who has served a total of five years as a member of a paid fire department of any city in this state or any police officer of any city or village, including any city having a home rule charter, shall suffer

death or disability as a result of hypertension or heart or respiratory defect or disease, there shall be a rebuttable presumption that such death or disability resulted from accident or other cause while in the line of duty for all purposes of Chapter 15, article 10, sections 16-1001 to 16-1042, and any firefighter's or police officer's pension plan established pursuant to any home rule charter, the Legislature specifically finding the subject of this section to be a matter of general statewide concern. The rebuttable presumption shall apply to death or disability as a result of hypertension or heart or respiratory defect or disease after the firefighter or police officer separates from his or her applicable employment if the death or disability occurs within three months after such separation. Such rebuttable presumption shall apply in any action or proceeding arising out of death or disability incurred prior to December 25, 1969, and which has not been processed to final administrative or judicial conclusion prior to such date.

48-101.01 Mental injuries and mental illness; first responder; compensation; when.

1. Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder if such first responder:
 - a. Establishes, by a preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and
 - b. Establishes, by a preponderance of the evidence, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.
2. For purposes of this section, mental injuries and mental illness arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer and employee relations, including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations.
3. For purposes of this section, first responder means a sheriff, a deputy sheriff, a police officer, an officer of the Nebraska State Patrol, a volunteer or paid firefighter, or a volunteer or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Presumptive Disability Law in Oregon

CODE PART:

Oregon Revised Statutes
Chapter 656 - Workers' Compensation
OCCUPATIONAL DISEASE LAW
656.802 Occupational disease; mental disorder; proof.

Oregon Legislative Website

DESCRIPTION:

656.802.

1. (a) As used in this chapter, "occupational disease" means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:
 - A. Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances.
 - B. Any mental disorder, whether sudden or gradual in onset, which requires medical services or results in physical or mental disability or death.
 - C. Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.
 - (b)As used in this chapter, "mental disorder" includes any physical disorder caused or worsened by mental stress.
2.
 - a. The worker must prove that employment conditions were the major contributing cause of the disease.
 - b. If the occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease.
 - c. Occupational diseases shall be subject to all of the same limitations and exclusions as accidental injuries under ORS 656.005 (7).
 - d. Existence of an occupational disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings.
 - e. Preexisting conditions shall be deemed causes in determining major contributing cause under this section.
3. Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:
 - a. The employment conditions producing the mental disorder exist in a real and objective sense.
 - b. The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.
 - c. There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.
 - d. There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.
4. Death, disability or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an 'occupational disease.' Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter's employment. However, any such firefighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted

employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter's employment.

5.
 - a. Death, disability or impairment of health of a nonvolunteer firefighter employed by a political division or subdivision who has completed five or more years of employment as a nonvolunteer firefighter is an occupational disease if the death, disability or impairment of health:
 - A. Is caused by brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer, multiple myeloma, non-Hodgkin's lymphoma, cancer of the throat or mouth, rectal cancer, breast cancer or leukemia;
 - B. Results from the firefighter's employment as a nonvolunteer firefighter; and
 - C. Is first diagnosed by a physician after July 1, 2009.
 - b. Any condition or impairment of health arising under this subsection is presumed to result from the firefighter's employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the condition or impairment was not caused or contributed to in material part by the firefighter's employment.
 - c. Notwithstanding paragraph (b) of this subsection, the presumption established under paragraph (b) of this subsection may be rebutted by clear and convincing evidence that the use of tobacco by the nonvolunteer firefighter is the major contributing cause of the cancer.
 - d. The presumption established under paragraph (b) of this subsection does not apply to prostate cancer if the cancer is first diagnosed by a physician after the firefighter has reached the age of 55. However, nothing in this paragraph affects the right of a firefighter to establish the compensability of prostate cancer without benefit of the presumption.
 - e. The presumption established under paragraph (b) of this subsection does not apply to claims filed more than 84 months following the termination of the nonvolunteer firefighter's employment as a nonvolunteer firefighter. However, nothing in this paragraph affects the right of a firefighter to establish the compensability of the cancer without benefit of the presumption.
 - f. The presumption established under paragraph (b) of this subsection does not apply to volunteer firefighters.
 - g. Nothing in this subsection affects the provisions of subsection (4) of this section.
 - h. For purposes of this subsection, 'nonvolunteer firefighter' means a firefighter who performs firefighting services and receives salary, hourly wages equal to or greater than the state minimum wage, or other compensation except for room, board, lodging, housing, meals, stipends, reimbursement for expenses or nominal payments for time and travel, regardless of whether any such compensation is subject to federal, state or local taxation. 'Nominal payments for time and travel' includes, but is not limited to, payments for on-call time or time spent responding to a call or similar noncash benefits.
6. Notwithstanding ORS 656.027 (6), any city providing a disability and retirement system by ordinance or charter for firefighters and police officers not subject to this chapter shall apply the presumptions established under subsection (5) of this section when processing claims for firefighters covered by the system.

Presumptive Disability Law in Texas

CODE PART:

Texas Statutes
Labor Code

TITLE 5. WORKERS' COMPENSATION

SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT
CHAPTER 408. WORKERS' COMPENSATION BENEFITS
SUBCHAPTER A. GENERAL PROVISIONS
Sec. 408.006. MENTAL TRAUMA INJURIES

SUBTITLE C. WORKERS' COMPENSATION INSURANCE COVERAGE FOR CERTAIN GOVERNMENT EMPLOYEES
CHAPTER 504. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF POLITICAL SUBDIVISIONS
SUBCHAPTER B. COVERAGE

Government Code
TITLE 6. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 607. BENEFITS RELATING TO CERTAIN DISEASES AND ILLNESSES
SUBCHAPTER B. DISEASES OR ILLNESSES SUFFERED BY FIREFIGHTERS AND EMERGENCY MEDICAL TECHNICIANS

Texas Legislative Website

DESCRIPTION:

SECTION 607.051. DEFINITIONS

- 607.052. APPLICABILITY
- 607.053. IMMUNIZATION; SMALLPOX.
- 607.054. TUBERCULOSIS OR OTHER RESPIRATORY ILLNESS.
- 607.056. ACUTE MYOCARDIAL INFARCTION OR STROKE.
- 607.057. EFFECT OF PRESUMPTION
- 607.058. PRESUMPTION REBUTTABLE.

Sec. 408.006. MENTAL TRAUMA INJURIES

- a. Notwithstanding Section 504.019, a [A] mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.

Acts 2017, effective September 1, 2017.

Sec. 504.019. COVERAGE FOR POST-TRAUMATIC STRESS DISORDER FOR CERTAIN FIRST RESPONDERS.

- a. In this section:
 1. "First responder" means an individual employed by a political subdivision of this state who is:
 - A. a peace officer under Article 2.12, Code of Criminal Procedure;
 - B. a person licensed under Chapter 773, Health and Safety Code, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or

- C. a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, whose principal duties are firefighting and aircraft crash and rescue.
- 2. "Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition adopted by the commissioner of workers' compensation.
- b. Post-traumatic stress disorder suffered by a first responder is a compensable injury under this subtitle only if it is based on a diagnosis that:
 - 1. the disorder is caused by an event occurring in the course and scope of the first responder's employment; and
 - 2. the preponderance of the evidence indicates that the event was a substantial contributing factor of the disorder.

Sec. 607.052.
APPLICABILITY

- a. Notwithstanding any other law, this subchapter applies only to a fire fighter or emergency medical technician who:
 - 1. on becoming employed or during employment as a fire fighter or emergency medical technician, received a physical examination that failed to reveal evidence of the illness or disease for which benefits or compensation are sought using a presumption established by this subchapter;
 - 2. is employed for five or more years as a fire fighter or emergency medical technician; and
 - 3. seeks benefits or compensation for a disease or illness covered by this subchapter that is discovered during employment as a fire fighter or emergency medical technician.
- b. A presumption under this subchapter does not apply:
 - 1. to a determination of a survivor's eligibility for benefits under Chapter 615;
 - 2. in a cause of action brought in a state or federal court except for judicial review of a proceeding in which there has been a grant or denial of employment-related benefits or compensation;
 - 3. to a determination regarding benefits or compensation under a life or disability insurance policy purchased by or on behalf of the fire fighter or emergency medical technician that provides coverage in addition to any benefits or compensation required by law; or
 - 4. if the disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco and:
 - A. the fire fighter or emergency medical technician is or has been a user of tobacco; or
 - B. the fire fighter's or emergency medical technician's spouse has, during the marriage, been a user of tobacco that is consumed through smoking.
- c. This subchapter does not create a cause of action.
- d. This subchapter does not enlarge or establish a right to any benefit or compensation or eligibility for any benefit or compensation.
- e. A fire fighter or emergency medical technician who uses a presumption established under this subchapter is entitled only to the benefits or compensation to which the fire fighter or emergency medical technician would otherwise be entitled to receive at the time the claim for benefits or compensation is filed.
- f. For purposes of this subchapter, an individual described by Section 607.051(3)(B) is considered to have been employed or compensated while the individual actively served as a volunteer fire fighter. An individual who actively serves as a volunteer fire fighter is one who participates in a minimum of 40 percent of the drills conducted by the individual's department and 25 percent of the fire or other emergency calls received by the department during the time that the volunteer fire fighter is on call.
- g. This subchapter applies to a fire fighter or emergency medical technician who provides services as an employee of an entity created by an interlocal agreement.
- h. Subsection (b)(4) only prevents the application of the presumption authorized by this subchapter and does not affect the right of a fire fighter or emergency medical technician to provide proof, without the use of that presumption, that an injury or illness occurred during the course and scope of employment.

Sec. 607.053.
IMMUNIZATION; SMALLPOX.

- a. A fire fighter or emergency medical technician is presumed to have suffered a disability or death during the course and scope of employment if the fire fighter or emergency medical technician:
 - 1. received preventative immunization against smallpox, or another disease to which the fire fighter or emergency medical technician may be exposed during the course and scope of employment and for which immunization is possible; and
 - 2. suffered death or total or partial disability as a result of the immunization.
- b. An immunization described by this section is considered preventative whether the immunization occurs before or after exposure to the disease for which the immunization is prescribed.
- c. A presumption established under Subsection (a) may not be rebutted by evidence that the immunization was:
 - 1. not required by the employer;
 - 2. not required by law; or
 - 3. received voluntarily or with the consent of the fire fighter or emergency medical technician.
- d. A fire fighter or emergency medical technician who suffers from smallpox that results in death or total or partial disability is presumed to have contracted the disease during the course and scope of employment as a fire fighter or emergency medical technician.

Sec. 607.054.

TUBERCULOSIS OR OTHER RESPIRATORY ILLNESS.

A fire fighter or emergency medical technician who suffers from tuberculosis, or any other disease or illness of the lungs or respiratory tract that has a statistically positive correlation with service as a fire fighter or emergency medical technician, that results in death or total or partial disability is presumed to have contracted the disease or illness during the course and scope of employment as a fire fighter or emergency medical technician.

Sec. 607.055.

CANCER.

- a. A fire fighter or emergency medical technician who suffers from cancer resulting in death or total or partial disability is presumed to have developed the cancer during the course and scope of employment as a fire fighter or emergency medical technician if:
 - 1. the fire fighter or emergency medical technician:
 - A. regularly responded on the scene to calls involving fires or fire fighting; or
 - B. regularly responded to an event involving the documented release of radiation or a known or suspected carcinogen while the person was employed as a fire fighter or emergency medical technician; and
 - 2. the cancer is known to be associated with fire fighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen, as described by Subsection (b).
- b. This section applies only to a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer.

Sec. 607.056.

ACUTE MYOCARDIAL INFARCTION OR STROKE.

- a. A fire fighter or emergency medical technician who suffers an acute myocardial infarction or stroke resulting in disability or death is presumed to have suffered the disability or death during the course and scope of employment as a fire fighter or emergency medical technician if:
 - 1. while on duty, the fire fighter or emergency medical technician:
 - A. was engaged in a situation that involved nonroutine stressful or strenuous physical activity involving fire suppression, rescue, hazardous material response, emergency medical services, or other emergency response activity; or
 - B. participated in a training exercise that involved nonroutine stressful or strenuous physical activity; and
 - 2. the acute myocardial infarction or stroke occurred while the fire fighter or emergency medical technician was engaging in the activity described under Subdivision (1).
- b. For purposes of this section, "nonroutine stressful or strenuous physical activity" does not include clerical, administrative, or nonmanual activities.

Sec. 607.057.

EFFECT OF PRESUMPTION.

Except as provided by Section 607.052(b), a presumption established under this subchapter applies to a determination of whether a fire fighter's or emergency medical technician's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan.

Sec. 607.058.

PRESUMPTION REBUTTABLE.

A presumption under Section 607.053, 607.054, 607.055, or 607.056 may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a fire fighter or emergency medical technician caused the individual's disease or illness.

Presumptive Disability Law in Vermont

CODE PART:

Vermont Statutes
TITLE 21 Labor
CHAPTER 9. EMPLOYER'S LIABILITY AND WORKERS' COMPENSATION
Sec. 601 Definitions.

Vermont Legislative Website

DESCRIPTION:

- B. In the case of fire fighters, as defined in 20 V.S.A. Sec. 3151(3) and (4), disability or death from heart injury or heart disease that becomes symptomatic within 72 hours of service in the line of duty shall be presumed to be compensable.
- C. "Line of duty," as applied to fire fighters and rescue and ambulance workers means one or more of the following:
 - i. Service in the worker's town or district, in answer to a call of the department, including going to and returning from a fire or emergency or participating in a fire or emergency drill, parade, test, or trial of any firefighting or emergency equipment.
 - ii. Similar service in another town or district to which the department has been called for firefighting or emergency purposes.
 - iii. Service under orders of any department officer in any other emergency to which the department is called in the town or district where the department is established.
 - iv. Activities authorized by the department for the purpose of raising funds for the department.
- D. "Line of duty" as applied to constables, police officers, or volunteer reserve police officers means either or both of the following:
 - i. Service as a police officer in answer to a complaint lodged with the department, including going to, returning from, and investigating the complaint or disorder.
 - ii. Service under orders from the department or in any emergency for which the employee serves as constable, police officer, or volunteer reserve police officer.
- E. In the case of a fire fighter, as defined in 20 V.S.A. Sec. 3151(3) and (4), who suffers death or disability from a cancer listed in subdivision (iv) of this subdivision (E), the fire fighter shall be presumed to have suffered the cancer as a result of exposure to conditions in the line of duty, unless it is shown by a preponderance of the evidence that the cancer was caused by non-service-connected risk factors or non-service-connected exposure, provided:
 - i. The fire fighter completed an initial and any subsequent cancer screening evaluations as recommended by the American Cancer Society based on the age and sex of the fire fighter prior to becoming a fire fighter or within two years of the effective date of this act, and the evaluation indicated no evidence of cancer.
 - ii. The fire fighter was engaged in firefighting duties or other hazardous activities over a period of at least five years in Vermont prior to the diagnosis.
 - iii. The presumption shall not apply to any fire fighter who has used tobacco products at any time within ten years of the date of diagnosis.
 - iv. The disabling cancer shall be limited to leukemia, lymphoma, or multiple myeloma, and cancers originating in the bladder, brain, colon, gastrointestinal tract, kidney, liver, pancreas, skin, or testicles.
 - v. The fire fighter is under the age of 65.
- F. A fire fighter who is diagnosed with cancer within ten years of the last active date of employment as a fire fighter shall be eligible for benefits under this subdivision. The date of injury shall be the date of the last injurious exposure as a fire fighter.
- G. It is recommended that fire departments maintain incident report records for at least ten years.
- H.
 - i. In the case of firefighters and members of a rescue or an ambulance squad, disability or death resulting from lung disease or an infectious disease either one of which is caused by aerosolized airborne infectious agents or blood-borne pathogens and acquired after a documented occupational exposure in the line of duty to a person with an illness shall be presumed to be

compensable, unless it is shown by a preponderance of the evidence that the disease was caused by nonservice-connected risk factors or nonservice-connected exposure. The presumption of compensability shall not be available if the employer offers a vaccine that is refused by the firefighter or rescue or ambulance worker and the firefighter or rescue or ambulance worker is subsequently diagnosed with the particular disease for which the vaccine was offered, unless the firefighter or rescue or ambulance worker's physician deems that the vaccine is not medically safe or appropriate for the firefighter or rescue or ambulance worker.

- ii. In the case of lung disease the presumption of compensability shall not apply to any firefighter or rescue or ambulance worker who has used tobacco products at any time within 10 years of the date of diagnosis.
- iii. A firefighter or rescue or ambulance worker shall have been diagnosed within 10 years of the last active date of employment as a firefighter or rescue or ambulance worker.
- iv. As used in this subdivision, "exposure" means contact with infectious agents such as bodily fluids through inhalation, percutaneous inoculation, or contact with an open wound, nonintact skin, or mucous membranes, or other potentially infectious materials that may result from the performance of an employee's duties. Exposure includes:
 - I. Percutaneous exposure. Percutaneous exposure occurs when blood or bodily fluid is introduced into the body through the skin, including by needle sticks, cuts, abrasions, broken cuticles, and chapped skin.
 - II. Mucocutaneous exposure. Mucocutaneous exposure occurs when blood or bodily fluids come in contact with a mucous membrane.
 - III. Airborne exposure. Airborne exposure means contact with an individual with a suspected or confirmed case of airborne disease or contact with air containing aerosolized airborne disease.

(11) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of that employment.

(l)(i) In the case of police officers, rescue or ambulance workers, or firefighters, post-traumatic stress disorder that is diagnosed by a psychiatrist or psychologist shall be presumed to have been incurred during service in the line of duty and shall be compensable, unless it is shown by a preponderance of the evidence that the post-traumatic stress disorder was caused by nonservice-connected risk factors or nonservice-connected exposure.

(ii) A police officer, rescue or ambulance worker, or firefighter who is diagnosed with post-traumatic stress disorder within three years of the last active date of employment as a police officer, rescue or ambulance worker, or firefighter shall be eligible for benefits under this subdivision (11).

(23) "Occupational disease" means a disease that results from causes and conditions characteristic of and peculiar to a particular trade, occupation, process, or employment, and to which an employee is not ordinarily subjected or exposed to outside or away from the employment and arises out of and in the course of the employment. The term "occupational disease" shall include a mental condition as defined in 8 V.S.A. §4089b, whether sudden or gradual in onset, that requires medical or psychiatric services or that results in physical or psychiatric disability or death.

Presumptive Disability Law in Alberta

CODE PART:

ALBERTA REGULATION 102/2003
Workers' Compensation Act
Part 4 Compensation Entitlement, Application and Payment

Alberta Legislative Website

DESCRIPTION:

Presumption re firefighters

24.1

1. In this section,
 - a. "firefighter" means an employee, including officers and technicians, employed by a municipality or Metis settlement and assigned exclusively to fire protection and fire prevention duties notwithstanding that those duties may include the performance of ambulance or rescue services;
 - b. "municipality" means a municipality as defined in the Municipal Government Act.
 - c. "part-time firefighter" means a casual, volunteer or part-time member of a fire protection service of a municipality or Metis settlement.
2. If a worker who is or has been a firefighter suffers an injury that is a primary site cancer of a type specified in the regulations, the injury shall be presumed to be an occupational disease, the dominant cause of which is the employment as a firefighter, unless the contrary is proven.
3. The presumption in subsection (2) applies only to a worker who has been a full-time member of a fire protection service of a municipality or Metis settlement for a minimum period prescribed by the Lieutenant Governor in Council by regulation and who has been regularly exposed to the hazards of a fire scene, other than a forest-fire scene, throughout that period.
4. The Lieutenant Governor in Council shall make regulations
 - a. designating primary site cancers to which the presumption in subsection (2) applies;
 - b. prescribing periods of employment for the purpose of subsection (3) which may be different for the different diseases designated under clause (a).
5. Repealed 2011 c17 s2
6. Repealed 2011 c17 s2
7. If a worker who is a firefighter suffers a myocardial infarction within 24 hours after attendance at an emergency response, the myocardial infarction shall be presumed to have arisen out of and occurred during the course of employment as a firefighter unless the contrary is proven.

Presumption re firefighters

24.2

1. In this section...
 - a. "emergency medical technician" means an individual who is registered as a member of the designated health discipline of Emergency Medical Technicians under the Health Disciplines Act in the Emergency Medical Responder, Emergency Medical Technician-Ambulance or Emergency Medical Technologist-Paramedic area of practice;
 - b. "firefighter" means a full-time firefighter or part-time firefighter as defined in section 24.1;
2. If a worker who is or has been an emergency medical technician, firefighter, peace officer or police officer is diagnosed with post-traumatic stress disorder by a physician or psychologist, the post-traumatic stress disorder shall be presumed, unless the contrary is proven, to be an injury that arose out of and occurred during the course of the worker's employment in response to a traumatic event or a series of traumatic events to which the worker was exposed in carrying out the worker's duties as an emergency medical technician, firefighter, peace officer or police officer.
3. The Board shall
 - a. assist a worker who is diagnosed with post-traumatic stress disorder in obtaining, or

- b. provide to the worker treatment by culturally competent clinicians who are familiar with the research concerning treatment of first responders for post-traumatic stress disorder.

FIREFIGHTERS' PRIMARY SITE CANCER REGULATION

Definitions

1. In this Regulation,
 - a. "Act" means the Workers' Compensation Act;
 - b. "non-smoker" means an individual who has not smoked a tobacco product in the 10 years prior to the date of diagnosis of a primary site cancer.

Designated cancers and periods of employment

2. For the purpose of section 24.1(4) of the Act, the primary site cancers and the minimum period of exposure for each disease are the following:

PRIMARY SITE CANCERS	MINIMUM PERIOD OF REGULAR EXPOSURE TO THE HAZARDS OF A FIRE SCENE
Primary leukemia	5 years
Primary site brain cancer	10 years
Primary site bladder cancer	15 years
Primary site lung cancer in non-smokers	15 years
Primary site ureter cancer	15 years
Primary site kidney cancer	20 years
Primary site colorectal cancer	20 years
A primary non-Hodgkins lymphoma	20 years

24.2(2) If a worker who is or has been an emergency medical technician, firefighter, peace officer or police officer is diagnosed with post-traumatic stress disorder by a physician or psychologist, the post-traumatic stress disorder shall be presumed, unless the contrary is proven, to be an injury that arose out of and occurred during the course of the worker's employment in response to a traumatic event or series of traumatic events to which the worker was exposed in carrying out the worker's duties as an emergency medical technician, firefighter, peace officer or police officer.

Presumptive Disability Law in British Columbia

CODE PART:

Workers Compensation Act
[RSBC 1996] CHAPTER 492

British Columbia Legislative Website

DESCRIPTION:

Workers Compensation Act
[RSBC 1996] CHAPTER 492

Division 2 - Compensation

6.1 Firefighters' occupational disease presumption

6.2 Emergency Intervention Disclosure Act
Firefighters Occupational Disease Regulation

Firefighters' occupational disease presumption

6.1

1. In this section, "firefighter" means a member of a fire brigade who is
 - a. described by paragraph (c) of the definition of "worker", and
 - b. assigned primarily to fire suppression duties, whether or not those duties include the performance of ambulance or rescue services.

(1.1) If a worker who is or has been a firefighter contracts primary site lung cancer, the disease must be presumed to be due to the nature of the worker's employment as a firefighter, unless the contrary is proved.

2. If a worker who is or has been a firefighter contracts a prescribed disease, the disease must be presumed to be due to the nature of the worker's employment as a firefighter, unless the contrary is proved.
3. The presumptions in subsections (1.1) and (2) apply only to a worker who
 - a. has worked as a firefighter for the minimum cumulative period prescribed for the disease, which minimum cumulative period may be defined differently, and be different, for different categories of firefighters,
 - b. throughout that period, has been regularly exposed to the hazards of a fire scene, other than a forest fire scene, and
 - c. is first disabled from the disease on or after the following date, as applicable:
 - i. in the case of a disease that, on or before the date this subparagraph comes into force, was prescribed by regulation for the purposes of subsection (2), April 11, 2005;
 - ii. in the case of primary site lung cancer, May 27, 2008;
 - iii. in the case of a disease that, after the date this subparagraph comes into force, is prescribed by regulation for the purposes of subsection (2), the date on which that regulation takes effect.

(3.1) In addition to the requirements of subsection (3), the presumption for a primary site lung cancer applies only if

- a. the worker has, in his or her lifetime, smoked a combined total of fewer than 365 cigarettes, cigars and pipes, or
 - b. the worker has been a non-smoker of tobacco products immediately before the date on which the worker is first disabled from that disease for the minimum period that may be prescribed, which minimum period may be different for different types or amounts of previous tobacco product usage.
4. The Lieutenant Governor in Council may make regulations for the purposes of subsections (2), (3) (a) and (3.1) (b).

5. [Repealed 2009-7-2.]
6. In subsections (7) to (9) of this section:
 - "firefighter" means a worker who is a member of a fire brigade and is assigned primarily to fire suppression duties, whether or not those duties include the performance of ambulance or rescue services;
 - "heart disease" includes disease of the pericardium or coronary arteries;
 - "heart injury" includes heart attack, cardiac arrest or arrhythmia.
7. If a worker is disabled as a result of a heart disease and was employed as a firefighter at or immediately before the date of disablement from the heart disease, the heart disease must be presumed to be due to the nature of the worker's employment as a firefighter, unless the contrary is proved.
8. If a worker is disabled as a result of a heart injury and was employed as a firefighter at or immediately before the date of disablement from the heart injury, the heart injury must be presumed to have arisen out of and in the course of the worker's employment as a firefighter, unless the contrary is proved.
9. The presumptions in subsections (7) and (8) apply only to a worker who
 - a. has been regularly exposed, throughout the worker's employment as a firefighter, to the hazards of a fire scene, and
 - b. is first disabled as a result of the heart disease or heart injury, as the case may be, on or after the date this subsection comes into force.

Emergency Intervention Disclosure Act

6.2

1. In this section:
 - "applicant" means an applicant, as defined in the Emergency Intervention Disclosure Act, who has obtained a testing order under that Act respecting a source individual;
 - "communicable disease" means a communicable disease prescribed for the purposes of the Emergency Intervention Disclosure Act;
 - "source individual" has the same meaning as in the Emergency Intervention Disclosure Act.
2. If a worker who is an applicant has contracted a communicable disease, it must be presumed, unless there is evidence to the contrary, that the communicable disease is due to the nature of the worker's employment, if
 - a. the worker came into contact with the bodily substance of the source individual in the course of the worker's employment, and
 - b. test results obtained under a testing order made under the Emergency Intervention Disclosure Act indicate that the source individual is infected with a pathogen that causes the communicable disease contracted by the applicant.

Workers Compensation Act Firefighters' Occupational Disease Regulation

Definitions

1 In this regulation, Act means the Workers Compensation Act.

Prescribed occupational diseases

2 Each of primary leukemia, primary non-Hodgkin's lymphoma, primary site bladder cancer, primary site brain cancer, primary site colorectal cancer, primary site kidney cancer, primary site testicular cancer and primary site ureter cancer is prescribed as an occupational disease for the purposes of section 6.1 (2) of the Act.

Minimum cumulative periods of employment prescribed

3 The minimum cumulative period set out in Column 2 of the Table is prescribed for the purposes of section 6.1 (3) (a) of the Act in respect of the occupational disease set out opposite it in Column 1.

Item	Occupational Disease	Minimum Cumulative Period
1	primary leukemia	5 years
2	primary non-Hodgkin's lymphoma	20 years
3	primary site bladder cancer	15 years

4	primary site brain cancer	10 years
5	primary site colorectal cancer	20 years
6	primary site kidney cancer	20 years
7	primary site lung cancer	15 years
8	primary site testicular cancer	20 years
9	primary site ureter cancer	15 years
10	primary site esophageal cancer	25 years

Minimum non-smoking periods prescribed for previous smokers

4 In the case of a worker who does not meet the requirement of 6.1 (3.1) (a) of the Act, the minimum period for the purposes of section 6.1 (3.1) (b) of the Act is prescribed as follows:

- a. if the worker smoked cigarettes,
 - i. 6 consecutive years, if the worker smoked, on average, fewer than 7 cigarettes per week,
 - ii. 6 consecutive years, if the worker smoked, on average, 1 to 9 cigarettes per day,
 - iii. 13 consecutive years, if the worker smoked, on average, 10 to 19 cigarettes per day,
 - iv. 18 consecutive years, if the worker smoked, on average, 20 cigarettes per day,
 - v. 23 consecutive years, if the worker smoked, on average, 21 to 39 cigarettes per day, and
 - vi. 28 consecutive years, if the worker smoked, on average, 40 or more cigarettes per day;
- b. 8 consecutive years, if the worker smoked, on average, one or more cigars or pipes per day but did not smoke cigarettes;
- c. if the worker smoked cigarettes in combination with cigars or pipes, the periods prescribed in paragraph (a) apply with a cigar or pipe counting as a cigarette.

Presumptive Disability Law in Manitoba

CODE PART:

C.C.S.M. c. W200 The Workers Compensation Act

Manitoba Legislative Website

DESCRIPTION:

Presumption re cancer and fire fighters

4(5.2)

If a worker who is or has been a full-time fire fighter or part-time fire fighter suffers an injury that is

- a. a primary site brain cancer;
- b. a primary site bladder cancer;
- c. a primary site kidney cancer;
- d. a primary non-Hodgkin's lymphoma;
- e. a primary leukemia;
- f. a primary site colorectal cancer;
- g. a primary site ureter cancer; or
- h. a primary site lung cancer;
- i. a primary site testicular cancer;
- j. a primary site esophageal cancer;
- k. multiple myeloma;
- l. a primary site prostate cancer;
- m. a primary site skin cancer; or
- n. a primary site breast cancer

the injury must be presumed to be an occupational disease the dominant cause of which is the employment as a fire fighter, unless the contrary is proven.

Application of presumption re cancer

4(5.3)

The presumption in subsection (5.2) applies to a worker

- a. who has been employed as a full-time fire fighter or part-time fire fighter for a minimum period prescribed by the Lieutenant Governor in Council by regulation; and
- b. who has been regularly exposed to the hazards of a fire scene, other than a forest-fire scene, throughout that period of employment.

Additional requirement re lung cancer

4(5.4)

In addition to the requirements of subsection (5.3), the presumption for a primary site lung cancer applies only to a worker who has been a non-smoker immediately before the day of the accident for a minimum period of time prescribed by the Lieutenant Governor in Council by regulation.

Effective date of presumption re cancer

4(5.5)

The presumption in subsection (5.2) applies to accidents that happen to

- a. full-time fire fighters on or after January 1, 1992; or
- b. part-time fire fighters on or after the day this subsection comes into force.

Presumption re heart injury to fire fighters

4(5.6)

If a worker who is a full-time fire fighter or part-time fire fighter suffers an injury to the heart within 24 hours after attendance at an emergency response, the injury must be presumed to be an accident arising out of and in the course of the employment, unless the contrary is proven.

4.1(1) The following definitions apply in this section.

"emergency response worker" means

- a. a full-time firefighter, a part-time firefighter or OFC personnel as those terms are defined in subsection 4 (5.1);
- b. an emergency medical response technician as defined in The Emergency Medical Response and Stretcher Transportation Act; or
- c. a police officer as defined in The Police Services Act.

"post-traumatic stress disorder" means an anxiety disorder that develops after exposure to a traumatic event or experience with symptoms that may include flashbacks, nightmares and intense feelings of fear or horror.

"presumption of PTSD" means the presumption of post-traumatic stress disorder established in subsection (2).

Presumption re post-traumatic stress disorder — emergency response workers

4.1(2)

If a worker who is or has been an emergency response worker suffers from post-traumatic stress disorder, the disorder must be presumed to be an occupational disease the dominant cause of which is the employment as an emergency response worker, unless the contrary is proven.

Effective date of presumption

4.1(3)

The presumption of PTSD applies to post-traumatic stress disorder diagnosed on or after a date prescribed by regulation.

Conditions and restrictions

4.1(4)

The presumption of PTSD is subject to any conditions or restrictions set out in regulations made under clause (5)(a).

Regulations

4.1(5)

The Lieutenant Governor in Council may make regulations

- a. prescribing conditions and restrictions relating to the presumption of PTSD, including conditions and restrictions related to nature of employment, length of employment, time during which the worker was employed or age of the worker;
- b. prescribing a date for the purpose of subsection 4.1(3) (effective date of presumption), which may be retroactive;
- c. respecting any transitional matters or difficulties that may be encountered in bringing this section into effect.

Presumptive Disability Law in Manitoba

CODE PART:

C.C.S.M. c. W200 The Workers Compensation Act

Manitoba Legislative Website

DESCRIPTION:

Presumption re cancer and fire fighters

4(5.2)

If a worker who is or has been a full-time fire fighter or part-time fire fighter suffers an injury that is

- a. a primary site brain cancer;
- b. a primary site bladder cancer;
- c. a primary site kidney cancer;
- d. a primary non-Hodgkin's lymphoma;
- e. a primary leukemia;
- f. a primary site colorectal cancer;
- g. a primary site ureter cancer; or
- h. a primary site lung cancer;
- i. a primary site testicular cancer;
- j. a primary site esophageal cancer;
- k. multiple myeloma;
- l. a primary site prostate cancer;
- m. a primary site skin cancer; or
- n. a primary site breast cancer

the injury must be presumed to be an occupational disease the dominant cause of which is the employment as a fire fighter, unless the contrary is proven.

Application of presumption re cancer

4(5.3)

The presumption in subsection (5.2) applies to a worker

- a. who has been employed as a full-time fire fighter or part-time fire fighter for a minimum period prescribed by the Lieutenant Governor in Council by regulation; and
- b. who has been regularly exposed to the hazards of a fire scene, other than a forest-fire scene, throughout that period of employment.

Additional requirement re lung cancer

4(5.4)

In addition to the requirements of subsection (5.3), the presumption for a primary site lung cancer applies only to a worker who has been a non-smoker immediately before the day of the accident for a minimum period of time prescribed by the Lieutenant Governor in Council by regulation.

Effective date of presumption re cancer

4(5.5)

The presumption in subsection (5.2) applies to accidents that happen to

- a. full-time fire fighters on or after January 1, 1992; or
- b. part-time fire fighters on or after the day this subsection comes into force.

Presumption re heart injury to fire fighters

4(5.6)

If a worker who is a full-time fire fighter or part-time fire fighter suffers an injury to the heart within 24 hours after attendance at an emergency response, the injury must be presumed to be an accident arising out of and in the course of the employment, unless the contrary is proven.

4.1(1) The following definitions apply in this section.

"emergency response worker" means

- a. a full-time firefighter, a part-time firefighter or OFC personnel as those terms are defined in subsection 4 (5.1);
- b. an emergency medical response technician as defined in The Emergency Medical Response and Stretcher Transportation Act; or
- c. a police officer as defined in The Police Services Act.

"post-traumatic stress disorder" means an anxiety disorder that develops after exposure to a traumatic event or experience with symptoms that may include flashbacks, nightmares and intense feelings of fear or horror.

"presumption of PTSD" means the presumption of post-traumatic stress disorder established in subsection (2).

Presumption re post-traumatic stress disorder — emergency response workers

4.1(2)

If a worker who is or has been an emergency response worker suffers from post-traumatic stress disorder, the disorder must be presumed to be an occupational disease the dominant cause of which is the employment as an emergency response worker, unless the contrary is proven.

Effective date of presumption

4.1(3)

The presumption of PTSD applies to post-traumatic stress disorder diagnosed on or after a date prescribed by regulation.

Conditions and restrictions

4.1(4)

The presumption of PTSD is subject to any conditions or restrictions set out in regulations made under clause (5)(a).

Regulations

4.1(5)

The Lieutenant Governor in Council may make regulations

- a. prescribing conditions and restrictions relating to the presumption of PTSD, including conditions and restrictions related to nature of employment, length of employment, time during which the worker was employed or age of the worker;
- b. prescribing a date for the purpose of subsection 4.1(3) (effective date of presumption), which may be retroactive;
- c. respecting any transitional matters or difficulties that may be encountered in bringing this section into effect.

Presumptive Disability Law in New Brunswick

CODE PART:

CHAPTER F-12.5
Firefighters' Compensation Act

New Brunswick Legislative Website

DESCRIPTION:

ENTITLEMENT TO COMPENSATION OR BENEFITS

5(1)A firefighter or former firefighter or his or her dependants are entitled to compensation or benefits in accordance with this Act if

- a. the firefighter is disabled by or dies from a heart attack that occurs within 24 hours after attendance at an emergency response scene in his or her capacity as a firefighter, or
- b. the firefighter or former firefighter is disabled by or dies from a prescribed disease, and
 - i. has served as a firefighter for a minimum period prescribed by regulation, and
 - ii. has been regularly exposed to the hazards of a fire scene in his or her capacity as a firefighter, other than a forest fire scene, throughout that period of service.

SCHEDULE A

Disease and Conditions	Length of Service
Primary site brain cancer	10 years
Primary site bladder cancer	15 years
Primary site colorectal cancer	20 years
Primary site esophageal cancer	25 years
A primary leukemia	5 years
Primary site lung cancer in a person who has not smoked cigarettes for a minimum of 10 years before the initial diagnosis	15 years
Primary site kidney cancer	20 years
A primary non-Hodgkin's lymphoma	20 years
Primary site testicular cancer	20 years
Primary site ureter cancer	15 years

7.1(1) The following definitions apply in this section.

"emergency response worker" means a firefighter, a paramedic or a police officer. (intervenant d'urgence)

"firefighter" means a firefighter as defined in the Firefighters' Compensation Act. (pompier)

"paramedic" means a person whose name is entered in the register kept pursuant to paragraph 10(1)(a) of An Act Respecting the Paramedic Association of New Brunswick. (travailleur paramédical)

"police officer" means a police officer as defined in the Police Act.(agent de police)

"post-traumatic stress disorder" means post-traumatic stress disorder as that condition is described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. (etat de stress post-traumatique)

"psychiatrist" means a psychiatrist as defined in the Mental Health Act.(psychiatre)

"psychologist" means an individual who is a member of the College of Psychologists of New Brunswick and

holds a licence issued under The College of Psychologists Act or an individual who is practising as a psychologist outside New Brunswick who is recognized as a psychologist by the licensing body of the jurisdiction in which that person practises.(psychologue)

7.1(2) Subject to this section, if an emergency response worker is diagnosed with post-traumatic stress disorder by a psychiatrist or psychologist, it shall be presumed, unless the contrary is shown, that the post-traumatic stress disorder arose out of and in the course of the worker's employment in response to a traumatic event or a series of traumatic events to which the worker was exposed in carrying out the worker's duties as an emergency response worker.

7.1(3) A worker is entitled to be paid compensation under this Act if

- a. the worker
 - i. is an emergency response worker or was an emergency response worker on or after the day this section comes into force, and
 - ii. is or was diagnosed with post-traumatic stress disorder by a psychiatrist or psychologist; and
- b. for the worker who
 - i. is an emergency response worker at the time the worker claims compensation under this Act, the diagnosis of post-traumatic stress disorder was made by a psychiatrist or psychologist on or after the day this section comes into force, or
 - ii. ceases to be an emergency response worker on or after a day this section comes into force, the diagnosis of post-traumatic stress disorder was made by a psychiatrist or psychologist no later than 24 months after the day on which the worker ceases to be an emergency response worker.

7.1(4) An emergency response worker who is entitled to benefits under this Act for post-traumatic stress disorder is entitled to receive treatment by a psychiatrist or psychologist who is familiar with the research concerning treatment for post-traumatic stress disorder.

Presumptive Disability Law in Ontario

CODE PART:

Workplace Safety and Insurance Act, 1997
ONTARIO REGULATION 253/07

Ontario Legislative Website

DESCRIPTION:

Interpretation

1. In this Regulation, "full-time fire fighter" means a worker who is a fire fighter as defined in section 1 of the Fire Protection and Prevention Act, 1997, who is regularly employed on a salaried basis and who is scheduled to work an average of 35 hours or more per week. O. Reg. 253/07, s. 1.

Prescribed class

2. Full-time fire fighters are prescribed as workers for the purposes of subsections 15.1 (1) and (4) of the Act. O. Reg. 253/07, s. 2.

Prescribed circumstances

3. For the purposes of subsection 15.1 (1) of the Act, the worker must have sustained the heart injury while, or within 24 hours of,
 - a. attending a fire scene in the performance of his or her duties as a full-time firefighter; or
 - b. actively participating in a training exercise that is related to his or her duties as a full-time firefighter and that involves a simulated fire emergency. O. Reg. 253/07, s. 3.

Prescribed diseases

4. For the purposes of subsection 15.1 (4) of the Act, the following are prescribed diseases:
 - a. Primary-site brain cancer.
 - b. Primary-site colorectal cancer.
 - c. Primary-site bladder cancer.
 - d. Primary acute myeloid leukemia, primary chronic lymphocytic leukemia or primary acute lymphocytic leukemia.
 - e. Primary-site ureter cancer.
 - f. Primary-site kidney cancer.
 - g. Primary non-Hodgkin's lymphoma.
 - h. Primary-site esophageal cancer. O. Reg. 253/07, s. 4.
 - i. Primary-site breast cancer.
 - j. Multiple myeloma.
 - k. Primary-site testicular cancer. O. Reg. 253/07, s. 4; O. Reg. 113/14, s. 1 (1).
 - l. Primary-site prostate cancer. O. Reg. 113/14, ss. 1 (2), 3 (2).
 - m. Primary-site lung cancer. O. Reg. 113/14, ss. 1 (3), 3 (3)
 - n. Primary-site skin cancer. O. Reg. 113/14, ss. 1 (4), 3 (4)
5. **Conditions and restrictions**
 - a. The presumption in subsection 15.1 (4) of the Act does not apply in respect of primary-site colorectal cancer unless the worker, (a) was diagnosed with the disease before he or she attained the age of 61 years; and (b) was employed as a full-time firefighter for a total of at least 10 years before being diagnosed. O. Reg. 253/07, s. 5 (1).
 - b. The presumption in subsection 15.1 (4) of the Act does not apply in respect of primary-site brain cancer unless the worker was employed as a full-time firefighter for a total of at least 10 years before being diagnosed. O. Reg. 253/07, s. 5 (2).
 - c. The presumption in subsection 15.1 (4) of the Act does not apply in respect of primary-site bladder cancer, primary acute myeloid leukemia, primary chronic lymphocytic leukemia, primary acute

- lymphocytic leukemia or primary-site ureter cancer unless the worker was employed as a full-time firefighter for a total of at least 15 years before being diagnosed. O. Reg. 253/07, s. 5 (3).
- d. The presumption in subsection 15.1 (4) of the Act does not apply in respect of primary-site kidney cancer or primary non-Hodgkin's lymphoma unless the worker was employed as a full-time firefighter for a total of at least 20 years before being diagnosed. O. Reg. 253/07, s. 5 (4).
 - e. The presumption in subsection 15.1 (4) of the Act does not apply in respect of primary-site esophageal cancer unless the worker was employed as a full-time firefighter for a total of at least 25 years before being diagnosed. O. Reg. 253/07, s. 5 (5).

Posttraumatic stress disorder, first responders and other workers

Definitions

14.

1. (1) In this section,

"ambulance service" has the same meaning as in subsection 1 (1) of the Ambulance Act; ("service d'ambulance")

"ambulance service manager" means a worker employed in an ambulance service who manages or supervises one or more paramedics and whose duties include providing direct support to paramedics dispatched by a communications officer on a request for ambulance services; ("chef de service d'ambulance")

"band council" means a council of the band as defined in subsection 2 (1) of the Indian Act (Canada); ("conseil de bande")

"communications officer" means a communications officer for the purposes of the Ambulance Act; ("agent de répartition")

"correctional institution" means a correctional institution as defined in section 1 of the Ministry of Correctional Services Act or a similar institution operated for the custody of inmates; ("établissement correctionnel")

"correctional services officer" means a worker who is directly involved in the care, health, discipline, safety and custody of an inmate confined to a correctional institution, but does not include a bailiff, probation officer or parole officer; ("agent des services correctionnels")

"emergency medical attendant" has the same meaning as in subsection 1 (1) of the Ambulance Act; ("ambulancier")

"firefighter" means,

- a. a firefighter as defined in subsection 1 (1) of the Fire Protection and Prevention Act, 1997, or
- b. a worker who,
 - i. is employed by a band council and assigned to undertake fire protection services on a reserve, or
 - ii. provides fire protection services on a reserve, either as a volunteer or for a nominal consideration, honorarium, training or activity allowance; ("pompier")

"fire investigator" means,

- a. a worker to whom the Fire Marshal appointed under subsection 8 (1) of the Fire Protection and Prevention Act, 1997 has delegated the duty to investigate the cause, origin and circumstances of a fire,
- b. a worker who was an inspector appointed under subsection 2 (4) of the Fire Marshals Act before that Act was repealed by the Fire Protection and Prevention Act, 1997, or
- c. a worker who is employed by a band council and assigned to investigate the cause, origin and circumstances of a fire on a reserve; ("enquêteur sur les incendies")

"full-time firefighter" means a worker who is a firefighter, is regularly employed on a salaried basis and is scheduled to work an average of 35 hours or more per week; ("pompier à temps plein")

"member of an emergency response team" means a person who provides first aid or medical assistance in an emergency, either as a volunteer or for a nominal consideration, honorarium or training or activity allowance, and who is dispatched by a communications officer to provide the assistance, but does not include an emergency medical attendant, a firefighter, a paramedic or a police officer; ("membre d'une équipe d'intervention d'urgence")

"operational manager" means a worker who directly supervises one or more correctional services officers; ("chef des opérations")

"paramedic" has the same meaning as in subsection 1 (1) of the Ambulance Act; ("auxiliaire médical")

"part-time firefighter" means a worker who is a firefighter and is not a volunteer firefighter or full-time firefighter; ("pompier à temps partiel")

"place of secure custody" has the same meaning as in subsection 3 (1) of the Child and Family Services Act; ("lieu de garde en milieu fermé")

"place of secure temporary detention" has the same meaning as in subsection 3 (1) of the Child and Family Services Act; ("lieu de détention provisoire en milieu fermé")

"police officer" means a chief of police, any other police officer or a First Nations Constable, but does not include a person who is appointed as a police officer under the Interprovincial Policing Act, 2009, a special constable, a municipal law enforcement officer or an auxiliary member of a police force; ("agent de police")

"posttraumatic stress disorder" means, subject to subsection (15), posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), published by the American Psychiatric Association; ("état de stress post-traumatique")

"psychiatrist" has the same meaning as in subsection 1 (1) of the Mental Health Act; ("psychiatre")

"psychologist" means a member of the College of Psychologists of Ontario who holds a certificate of registration for a psychologist authorizing autonomous practice, or an individual who has a similar status in another province or territory of Canada; ("psychologue")

"reserve" means a reserve as defined in subsection 2 (1) of the Indian Act (Canada); ("réserve")

"worker in a correctional institution" means a correctional services officer, an operational manager, or a worker who is employed at a correctional institution to provide direct health care services by assessing, treating, monitoring, evaluating and administering medication to an inmate confined to a correctional institution; ("travailleur d'un établissement correctionnel")

"worker in a place of secure custody or place of secure temporary detention" means a youth services worker, a youth services manager, or a worker who is employed at a place of secure custody or place of secure temporary detention to provide direct health care services by assessing, treating, monitoring, evaluating and administering medication to a young person in custody or detention at the place of secure custody or secure temporary detention; ("travailleur d'un lieu de garde en milieu fermé ou d'un lieu de détention provisoire en milieu fermé")

"worker involved in dispatch" means a communications officer, a worker whose duties include the dispatch of firefighters and police officers, or a worker who receives emergency calls that initiate the dispatch of ambulance services, firefighters and police officers; ("travailleur s'occupant de répartition")

"young person" has the same meaning as in subsection 3 (1) of the Child and Family Services Act; ("adolescent")

"youth services manager" means a worker who is employed in a management position at a place of

secure custody or secure temporary detention, and who directly supervises youth services workers, but does not include an administrator of a place of secure custody or secure temporary detention or a manager who only supervises educational, health-related or counselling services to young persons at the facility; ("chef des services aux jeunes")

"youth services worker" means a worker who is employed at a place of secure custody or secure temporary detention, and who directly supervises young persons who are in custody or detention at the place of secure custody or secure temporary detention, including supervising daily routines and programs, but does not include a worker who provides only educational, health-related or counselling services to young persons at the facility. ("travailleur des services aux jeunes") 2016, c. 4, s. 2.

Application

2. This section applies with respect to the following workers:
 - a. Full-time firefighters.
 - b. Part-time firefighters.
 - c. Volunteer firefighters.
 - d. Fire investigators.
 - e. Police officers.
 - f. Members of an emergency response team.
 - g. Paramedics.
 - h. Emergency medical attendants.
 - i. Ambulance service managers.
 - j. Workers in a correctional institution.
 - k. Workers in a place of secure custody or place of secure temporary detention.
 - l. Workers involved in dispatch. 2016, c. 4, s. 2.

Entitlement to benefits

3. Subject to subsection (7), a worker is entitled to benefits under the insurance plan for posttraumatic stress disorder arising out of and in the course of the worker's employment if,
 - a. the worker is a worker listed in subsection (2) or was a listed worker for at least one day on or after transition day;
 - b. the worker is or was diagnosed with posttraumatic stress disorder by a psychiatrist or psychologist; and
 - c. for a worker who,
 - i. is a listed worker at the time of filing a claim, the diagnosis is made on or after transition day,
 - ii. ceases to be a listed worker on or after the day on which section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force, the diagnosis is made on or after transition day but no later than 24 months after the day on which the worker ceases to be a listed worker, or
 - iii. ceased to be a listed worker after transition day but before the day on which section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force, the diagnosis is made on or after transition day but no later than 24 months after the day on which section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force. 2016, c. 4, s. 2.

Interpretation

4. In subsection (3),

"transition day" means the day that is 24 months before the day on which section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force. 2016, c. 4, s. 2.

Same

5. The worker is entitled to benefits under the insurance plan as if the posttraumatic stress disorder were a personal injury. 2016, c. 4, s. 2.

Presumption re: course of employment

6. For the purposes of subsection (3), the posttraumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment, unless the contrary is shown. 2016, c. 4, s. 2.

No entitlement, employer's decisions or actions

7. A worker is not entitled to benefits under the insurance plan for posttraumatic stress disorder if it is shown that the worker's posttraumatic stress disorder was caused by his or her employer's decisions or actions

relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment. 2016, c. 4, s. 2.

s. 13 entitlement

8. Nothing in this section affects entitlement to benefits under section 13 for posttraumatic stress disorder that meets the requirements of that section. 2016, c. 4, s. 2.

No refiling of claims

9. If a worker filed a claim in respect of posttraumatic stress disorder and the claim was denied by the Board or by the Appeals Tribunal, the worker may not refile the claim under this section. 2016, c. 4, s. 2.

Time limits

10. The time limits in subsections 22 (1) and (2) do not apply in respect of a claim made under this section that is made with respect to posttraumatic stress disorder that was diagnosed before section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force. 2016, c. 4, s. 2.

Same

11. A claim made under this section that is made with respect to posttraumatic stress disorder that was diagnosed before section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force must be filed within six months after the day on which section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force. 2016, c. 4, s. 2.

Pending claim

12. If a worker listed in subsection (2) has filed a claim for entitlement for posttraumatic stress disorder and the claim is pending before the Board on the day section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force, the Board shall decide the claim in accordance with this section as though the requirement in clauses (3) (a) and (c) were satisfied. 2016, c. 4, s. 2.

Same

13. For the purposes of subsection (12), a claim is pending on the day section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force if any of the following conditions are met:
 - a. The Board had not yet made a decision by that day.
 - b. There was, on that day, a right to file a notice of objection in respect of the claim under section 120 and a notice of objection is filed, on or after that day, in accordance with that section.
 - c. There was, on that day, a right of appeal in respect of the claim under section 125 and a notice of appeal is filed, on or after that day, in accordance with that section. 2016, c. 4, s. 2.

Pending appeal

14. If a worker listed in subsection (2) has filed a claim for entitlement for posttraumatic stress disorder and the claim is pending before the Appeals Tribunal on the day section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force, the Appeals Tribunal shall refer the claim back to the Board and the Board shall decide the claim in accordance with this section as though the requirement in clauses (3) (a) and (c) were satisfied. 2016, c. 4, s. 2.

Transition, prior diagnosis

15. For the purposes of pending claims and appeals, and of new claims made under this section within six months after the day section 2 of the Supporting Ontario's First Responders Act (Posttraumatic Stress Disorder), 2016 comes into force, posttraumatic stress disorder includes posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), published by the American Psychiatric Association. 2016, c. 4, s. 2.

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(1)



Exclusively for IAFF members. It's okay to ask for help.

Treatment for successful recovery from substance abuse, PTSD and other co-occurring behavioral health issues.

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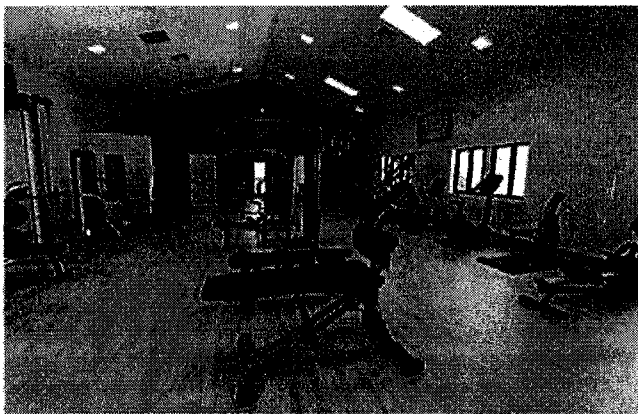
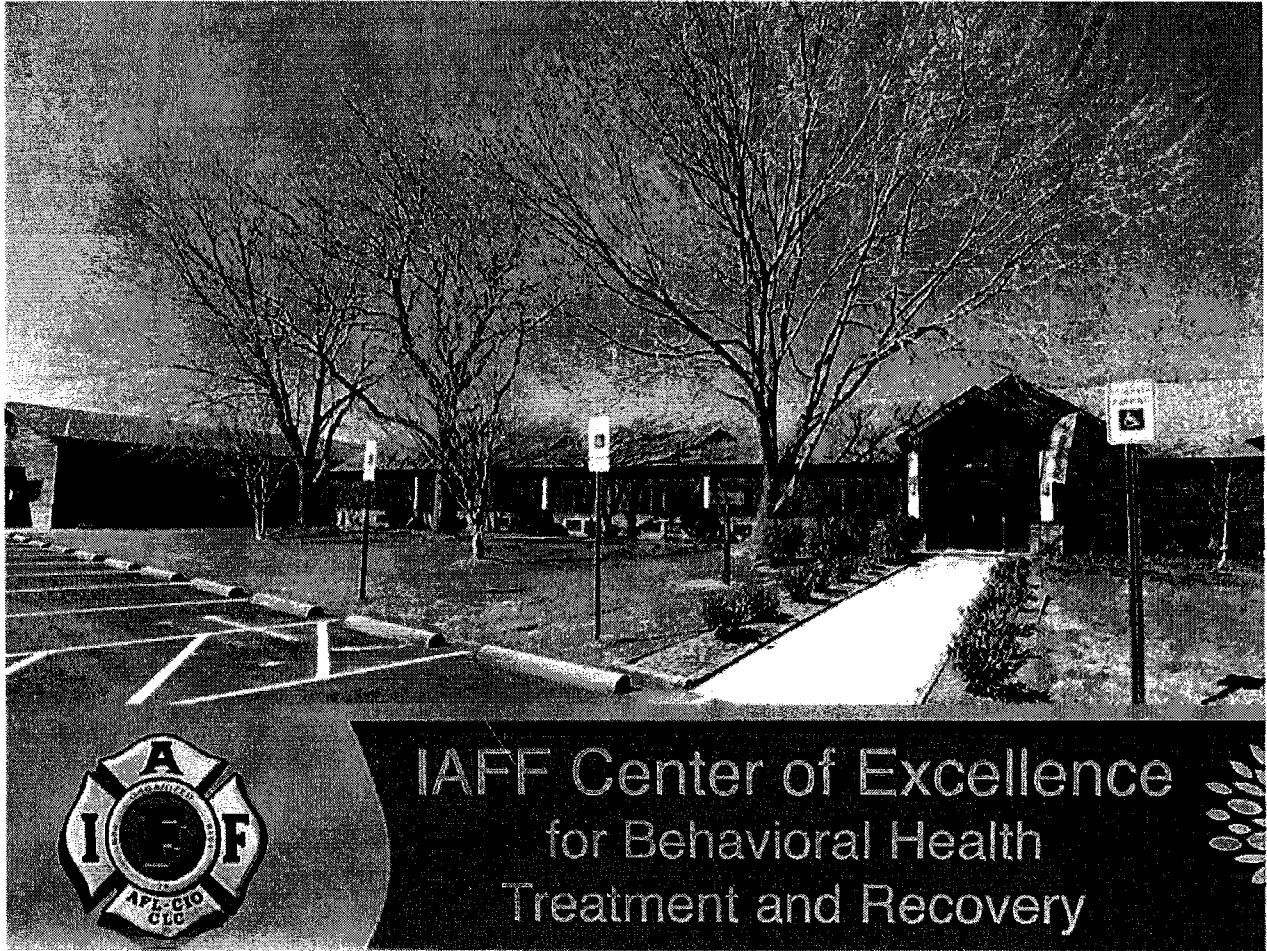
Our Center

The IAFF Center of Excellence for Behavioral Health Treatment and Recovery is a one-of-a-kind treatment facility specializing in PTSD for IAFF members – and IAFF members only – who are struggling with addiction, PTSD other related behavioral health challenges to receive the help they need in taking

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first steps toward recovery. It is a safe haven for members to talk with other members who have faced
overcome similar challenges.



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Thoughtful Design

Designed from the ground up with fire fighters in mind, the Center sits on a 15-acre campus and include state-of-the-art gym and other features that encourage physical activity to help in recovery and preparing return to the job.

Natural Serenity

Located in Upper Marlboro, Maryland, just outside Washington, D.C., the IAFF Center is surrounded by lupine forest and features onsite areas for reflection and enjoying nature's healing powers.

Knowledgeable Staff

The IAFF Center is overseen by Craig L. Katz, M.D., who designed a program for first responders in the aftermath of 9/11, and Abby Morris, M.D., an expert in the behavioral healthcare field. We understand the rigors of your job, and know what it takes to help.

LEARN MORE ABOUT OUR CENTER (/CENTER/)

About Our Program

Care for your unique needs

If you're struggling with post-traumatic stress along with co-occurring depression, anxiety or substance abuse disorders, you need treatment from professionals who understand the fire service culture and the unique pressures of your job. The IAFF Center of Excellence connects you to best-practice, evidence-based therapies delivered by clinicians who understand the types of trauma you experience on a day-to-day basis.

Completely confidential treatment

Center staff cannot discuss your treatment with anyone – your fire department, family or friends – unless given explicit permission by you. This applies before, during and after your stay at the IAFF Center of Excellence.

Our Partner: Advanced Recovery Systems

With seven treatment centers across the United States, the continuum of care provided by Advanced Recovery Systems is unsurpassed. The IAFF has partnered with Advanced Recovery Systems to provide members with specialized treatment for the everyday stressors that trigger PTSD, behavioral health disorders and substance abuse.

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We Can Help

Post Traumatic Stress Disorder (PTSD)

You're exposed to traumatic situations every day you're on the job. For this reason, fire fighters and paramedics are twice as likely as the general population to experience PTSD. That's why therapies to treat and recover from PTSD are first priority at the IAFF Center of Excellence. You'll learn coping strategies, through individual and group therapy sessions and participate in activities that will help you recover, build resilience and return to the job.

Substance Abuse

It is not uncommon when suffering from PTSD to experience co-occurring disorders, including alcohol and drug abuse as substances are sometimes used to self-medicate and escape symptoms. As part of the integrated, multi-disciplinary approach at the IAFF Center of Excellence, IAFF members struggling with addiction will receive the full continuum of care, from detox to outpatient therapy, so they can get the necessary treatment to start living fuller lives.

Behavioral Health

Depression, anxiety and other behavioral health issues can also be brought on or worsened by the stress of the job. However, through medical and pharmacological treatment and cognitive talk therapy, members can get behavioral health treatment in a caring and supportive atmosphere that understands the fire service culture.

GET HELP NOW (/GET-HELP-NOW/)

Recovery Stories





Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

A research study conducted by the National Council on Compensation Insurance (NCCI) finds that **all 50** states and the District of Columbia specifically address compensability for mental injuries,¹ either by statute, regulation, and/or case law

Highlights of the study include the following:

- **Compensability for Mental-Mental Injuries: 27 jurisdictions** (AK, AZ, CA, CO, DC, HI, IL, LA, MA, MD, ME, MI, MN, MO, NC, NH, NM, NV, NY, OR, RI, SC, TN, UT, VA, WA, and WI) contain statutory language expressly **allowing compensation for nonphysical mental (mental-mental) injuries** or stress under limited circumstances²
- **Mental-Mental and Mental-Physical Exclusions:** Montana is the only state that specifically **denies compensability for both “mental-physical” and “mental-mental” injuries**
- **Personnel Actions: 21 states** (AK, CA, CO, CT, HI, ID, MA, ME, MN, MO, NE, NH, NM, NV, NY, OR, SC, TN, TX, UT, and WA) **specify that stress arising out of personnel actions is not compensable**
- **Diagnosis for Mental Compensation: 10 states** (AR, CO, FL, ID, LA, MN, OK, SC, WA, and WY) **require psychological diagnosis for compensable mental injuries**
- **American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM): 8 states** (AR, CA, FL, ID, LA, MN, OK, and WY) **require the use of the DSM** in diagnosing mental injuries

Note: An “N/A” entry in the following chart indicates that our research did not result in finding a response for that particular column’s topic. To view the endnotes referenced in the table, double-click the number or place your cursor over the number.



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

State	Compensable Mental Injury	Coverage of Mental Injury When No Physical Injury	Degree of Evidence Required in Burden of Proof	Who Must Diagnose or Offer Evidence of Mental Injury?	Must Meet Criteria of DSM ³	Degree of Mental Stress Required	Exclusions
AL	Mental disorder or mental injury	No	Proximate cause	N/A	N/A	N/A	N/A
AK	Mental injuries caused by mental stress	Yes	Predominant cause	N/A	N/A	Extraordinary and unusual	Good faith disciplinary actions, work evaluation, job transfer, layoff, demotion, termination, or similar action
AR	Mental injury or illness	No ⁴	Preponderance of evidence	Licensed psychiatrist or psychologist	Yes, most current edition	N/A	N/A
AZ	Mental, emotional, psychotic, or neurotic injury, illness, or condition	Yes	Substantial contributing cause	N/A	N/A	Unexpected, unusual, or extraordinary	Mental injury that was not unexpected or unusual, or extraordinary stress related to employment
CA	Psychiatric injury or mental disorder	Yes	Preponderance of evidence ⁵	N/A	Yes, 3rd Edition ⁶	N/A	No compensation paid for injury substantially caused by lawful, nondiscriminatory, good faith personnel action or, with exceptions, claims filed after notice of termination or layoff and the claim is for an injury occurring prior to the time of notice of



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

State	Compensable Mental Injury	Coverage of Mental Injury When No Physical Injury	Degree of Evidence Required in Burden of Proof	Who Must Diagnose or Offer Evidence of Mental Injury?	Must Meet Criteria of DSM ⁵	Degree of Mental Stress Required	Exclusions
							termination or layoff
CO	Mental impairment	Yes ⁷	Competent evidence ⁸	Licensed physician or psychologist ⁹	N/A	N/A	Good faith personnel actions ¹⁰ ; claims based upon circumstances or facts common to all fields of employments; other ¹¹
CT	Mental or emotional impairment	No ¹²	Police officer for mental-mental injury; police officer's reasonable belief ¹³	Firefighters for mental-mental injury; licensed and board-certified mental health professional	No	N/A	Personnel actions
DE	Mental injury or mental disorder	Yes ¹⁴	Objective evidence	N/A	No	Real	N/A
DC	Mental condition or mental incapacity	Yes ¹⁵	N/A	N/A	No	N/A	N/A
FL	Mental or nervous injuries	No	Clear and convincing medical evidence ¹⁶	Licensed psychiatrist	Yes, most recent edition	N/A	Mental, psychological, or emotional injury arising out of depression from being out of work or losing employment opportunities, resulting from a preexisting mental, psychological, or emotional condition or due to pain or other subjective complaints that cannot be



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

State	Compensable Mental Injury	Coverage of Mental Injury When No Physical Injury	Degree of Evidence Required in Burden of Proof	Who Must Diagnose or Offer Evidence of Mental Injury?	Must Meet Criteria of DSM ³	Degree of Mental Stress Required	Exclusions
							substantiated by objective, relevant medical findings
GA	Psychological injuries or psychiatric and psychological problems	No ¹⁷	N/A	N/A	No	N/A	N/A
HI	Mental stress or loss of mental function	Yes	N/A	N/A	No	N/A	Mental stress resulting solely from a good faith disciplinary action ¹⁸
IA	Mental injury ¹⁹	Yes ²⁰	N/A	N/A	N/A	N/A	N/A
ID	Psychological injuries, disorders, or conditions; psychological mishap or event	No	Injury exists in real and objective sense; clear and convincing evidence injury arose out of, and in course of, employment	Licensed psychologist or psychiatrist	Yes, 3rd Edition Revised or any successor manual	Sudden and extraordinary	Injuries arising from conditions generally inherent in every working situation or not the product of a sudden and extraordinary event; personnel-related action
IL	Emotional shock; mental disorder	Yes ²¹	Emotional shock traceable to a definite time, place, and cause	N/A	N/A	Severe and sudden	Injuries arising from day-to-day emotional strain and tension; where employment conditions were not the major contributing cause of the injury
IN	Psychological or mental stress	Yes ²²	N/A	N/A	N/A	N/A	N/A



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

State	Compensable Mental Injury	Coverage of Mental Injury When No Physical Injury	Degree of Evidence Required in Burden of Proof	Who Must Diagnose or Offer Evidence of Mental Injury?	Must Meet Criteria of DSM ³	Degree of Mental Stress Required	Exclusions
	injuries						
KS	Mental disorder or injury ²³	No	N/A	N/A	N/A	N/A	N/A
KY	Psychological, psychiatric, or stress-related change	No	N/A	N/A	N/A	N/A	N/A
LA	Mental injury	Yes	Clear and convincing evidence	Licensed psychologist or psychiatrist	Yes, most current edition	Sudden, unexpected, and extraordinary	N/A
MA	Mental or emotional disabilities	Yes	N/A	N/A	N/A	N/A	Bona fide personnel action where emotional harm is unintentionally inflicted
MD	Psychological injury	Yes ²⁴	N/A	N/A	N/A	N/A	N/A
ME	Mental injury	Yes	Clear and convincing evidence	N/A	N/A	Extraordinary and unusual	Good faith disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action
MI	Mental disabilities	Yes	Reasonably grounded in fact or reality	N/A	N/A	N/A	Mental disabilities arising out of unfounded perceptions of events of employment
MN	Mental impairment ²⁵	Yes	N/A	Licensed psychiatrist or psychologist	Yes, most recently	N/A	Ordinary diseases of life to which the general



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

State	Compensable Mental Injury	Coverage of Mental Injury When No Physical Injury	Degree of Evidence Required in Burden of Proof	Who Must Diagnose or Offer Evidence of Mental Injury?	Must Meet Criteria of DSM ³	Degree of Mental Stress Required	Exclusions
					published edition		public is equally exposed outside of employment; good faith disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action
MO	Mental injury or psychological stress ²⁶	Yes	N/A	N/A	N/A	Extraordinary and unusual	Good faith disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action
MS	Mental or emotional injury	Yes ²⁷	Mental-mental injury: clear and convincing	N/A	N/A	N/A	Injuries resulting from "ordinary incidents of employment" and there was no "untoward event or unusual occurrence" that contributed to the injury
MT	None	No	N/A	N/A	N/A	N/A	N/A
NC	Psychological injury	Yes ²⁸	N/A	N/A	N/A	N/A	N/A
ND	Mental or	No	Reasonable	N/A	N/A	Unusual stress is at	When the physical



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

State	Compensable Mental Injury	Coverage of Mental Injury When No Physical Injury	Degree of Evidence Required in Burden of Proof	Who Must Diagnose or Offer Evidence of Mental Injury?	Must Meet Criteria of DSM ⁵	Degree of Mental Stress Required	Exclusions
	psychological conditions		medical certainty			least 50% of cause of injury or disease, as compared with all other contributing causes combined	injury is determined to be less than 50% of cause of condition, as compared with all other contributing causes combined, and the condition preexisted the work injury
NE	Mental injuries and mental illness ²⁹	No ³⁰	Preponderance of evidence ³¹	N/A	N/A	N/A	Events incidental to normal employer and employee relations, including personnel actions
NH	Mental injury, stress	Yes ³²	N/A	N/A	N/A	N/A	Any good faith disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action
NJ	Psychological illness	Yes ³³	N/A	N/A	N/A	N/A	Not stress typical of any work ³⁴
NM	Mental illness	Yes	N/A	N/A	N/A	Mental-mental only: psychologically traumatic event	Disciplinary, corrective, or job evaluation action or cessation of the worker's employment
NV	Mental injury, stress	Yes	Clear and convincing medical or psychiatric	N/A	N/A	Extreme stress in times of danger	Any ailment, disorder, death, or disability



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

State	Compensable Mental Injury	Coverage of Mental Injury When No Physical Injury	Degree of Evidence Required in Burden of Proof	Who Must Diagnose or Offer Evidence of Mental Injury?	Must Meet Criteria of DSM ³	Degree of Mental Stress Required	Exclusions
			evidence				caused by any gradual mental stimulus; personnel action ³⁵
NY	Work-related stress	Yes	N/A	N/A	N/A	N/A	Lawful, good faith personnel decision involving a disciplinary action, work evaluation, job transfer, demotion, or termination
NC	Psychological injury	Yes ³⁶	N/A	N/A	N/A	N/A	N/A
ND	Mental or psychological conditions	No	Reasonable medical certainty	N/A	N/A	Unusual stress is at least 50% of cause of injury or disease, as compared with all other contributing causes combined	When the physical injury is determined to be less than 50% of cause of condition, as compared with all other contributing causes combined, and the condition preexisted the work injury
OH	Psychiatric conditions	No ³⁷	N/A	N/A	N/A	N/A	N/A
OK	Mental injury or illness	No ³⁸	Preponderance of the evidence	Licensed psychiatrist or psychologist	Yes, most current issue	N/A	N/A
OR	Mental emotional disorder	Yes	Clear and convincing evidence	N/A	N/A	N/A	See footnote ³⁹
PA	Mental disability	Yes ⁴⁰	Sufficient, competent, and credible evidence	N/A	N/A	N/A	N/A
RI	Mental injuries	Yes	Identifiable	N/A	N/A	Emotional stress	Day-to-day emotional



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

State	Compensable Mental Injury	Coverage of Mental Injury When No Physical Injury	Degree of Evidence Required in Burden of Proof	Who Must Diagnose or Offer Evidence of Mental Injury?	Must Meet Criteria of DSM?	Degree of Mental Stress Required	Exclusions
						resulting from a situation of greater dimensions than the day-to-day emotional strain and tension that all employees encounter daily	strain that all employees encounter without sustaining serious mental injuries
SC	Stress, mental illness, or injury	Yes	Preponderance of the evidence, medical evidence	Authorized psychologist or psychiatrist ⁴¹	N/A	Extraordinary and unusual	See footnote ⁴²
SD	Psychological, psychiatric, or emotional condition	No	Clear and convincing evidence	N/A	N/A	N/A	N/A
TN	Mental injury, loss of mental faculties, or a mental or behavioral disorder	Yes	Identifiable	N/A	N/A	Sudden or unusual stimulus	Loss of employment or employment opportunities
TX	Mental or emotional injury	No	N/A	N/A	N/A	N/A	Legitimate personnel action
UT	Mental or emotional injury, mental stress	Yes	Preponderance of the evidence	NA	N/A	Extraordinary and sudden	Good faith personnel actions, alleged discrimination, harassment, or unfair labor practices
VA	Psychological injury ⁴³	Yes ⁴⁴	N/A	N/A	N/A	Traumatic stressor; see footnote	N/A
VT	Mental injury ⁴⁵	Yes ⁴⁶	N/A	N/A	N/A	Significantly greater dimension than	N/A



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

State	Compensable Mental Injury	Coverage of Mental Injury When No Physical Injury	Degree of Evidence Required in Burden of Proof	Who Must Diagnose or Offer Evidence of Mental Injury?	Must Meet Criteria of DSM ³	Degree of Mental Stress Required	Exclusions
						daily stresses encountered by all employees ⁴⁷	
WA	Mental conditions, mental disabilities, mental illness	Yes ⁴⁸	N/A	Licensed health-care professional with appropriate training and experience ⁴⁹	N/A	N/A	See footnote ⁴⁸
WI	Mental harm	Yes	Identifiable	N/A	N/A	Greater dimensions than the day-to-day emotional strain and tension that all employees must experience ⁵⁰	N/A
WV	Psychiatric impairment	No	Reasonable medical probability	N/A	See footnote ⁵¹	N/A	N/A
WY	Mental injuries	No	Clear and convincing evidence	Licensed psychiatrist or clinical psychologist	Yes, most recent edition	N/A	N/A



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

¹ For purposes of this paper, reference to mental "injuries" also includes mental impairments or disorders that are "occupational diseases." DC and KS workers compensation laws do not expressly provide for compensation of mental injuries, but they do reference mental conditions and/or mental providers.

² Compensable mental-mental injuries must typically be considered extraordinary and the predominate or substantial contributing cause.

³ The *DSM* is the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*. As described by its publisher, it is the "standard classification of mental disorders used by mental health professionals in the United States." The 5th Edition is the most current version.

⁴ Physical injury is not required to victims of violent crimes. Ark. Stat. 11-9-113

⁵ If injuries resulting in an employee being victim of a violent act or from direct exposure to significant violent act, employee must demonstrate that actual events of employment were substantial cause (35% to 40% of causation from all sources combined). Cal. Labor Code 3208.3

⁶ Or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

⁷ The mental impairment that is the basis of the claim shall have arisen primarily from the claimant's then occupation and place of employment in order to be compensable.

⁸ "Accident," "injury," and "occupational disease" shall not be construed to include disability or death caused by or resulting from mental or emotional stress unless it is shown by competent evidence that such mental or emotional stress is proximately caused solely by hazards to which the worker would not have been equally exposed outside the employment. Colo. Stat. 8-41-302(1)



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

⁹ Although who can diagnose the mental impairment is not stated, testimony from a licensed physician or psychologist is required to prove a medical impairment exists. Colo. Stat. 8-41-301(2)(a)

¹⁰ A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, lay-off, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer.

¹¹ The mental impairment that is the basis of the claim must be, in and of itself, either sufficient to render the employee temporarily or permanently disabled from pursuing the occupation from which the claim arose or require medical or psychological treatment.

¹² Physical injury not required if mental or emotional impairment arises from occupational disease or, in the case of a police officer, arises from such police officer's use of deadly force or subjection to deadly force in the line of duty, regardless of whether such police officer is physically injured, provided such police officer is the subject of an attempt by another person to cause serious physical injury or death through the use of deadly force, and such police officer reasonably believes such police officer to be the subject of such an attempt, or (III) in the case of a firefighter, is diagnosed with post-traumatic stress disorder by a licensed and board-certified mental health professional, determined by such professional to be originating from the firefighter witnessing the death of another firefighter while engaged in the line of duty and not subject to any other exclusion in this section. Conn. Stat. 31-275(f)(6)(B)(ii)

¹³ Police officer reasonably believes such police officer is the subject of an attempt by another person to cause serious physical injury or death through the use of deadly force.

¹⁴ "In order to be compensated for a mental injury in the absence of a specific and identifiable industrial accident (i.e., a mental injury which is gradually caused by stress), a claimant must offer evidence demonstrating objectively that work conditions were actually stressful and that such conditions were a substantial cause of claimant's mental disorder; the stress causing the injury need not be unusual or extraordinary but it must be real and proved by objective evidence." *State v. Cephas*, 637 A.2d 20, 27-28 (Del. 1994)

¹⁵ See DC Code 32-1501: "Physical impairment" means any physical or mental condition which is or is likely to be a hindrance or obstacle to obtaining employment.

¹⁶ The compensable physical injury must be and remain the major contributing cause of the mental or nervous condition, and the compensable physical injury as determined by reasonable medical certainty must be at least 50 %responsible for the mental or nervous condition as compared to all other contributing causes combined.

¹⁷ Purely psychological injuries are not compensable. See *Abernathy v. City of Albany*, 495 S.E.2d 13 (Ga. 1998)

¹⁸ Provided that if a collective bargaining agreement or other employment agreement specifies a different standard than good faith for disciplinary actions, the standards set in the collective bargaining agreement, or other employment agreement, shall be applied in lieu of the good faith standard.

¹⁹ *Dunlavy v. Economy Fire and Cas. Co.*, 526 N.W.2d 845 (IA 1995) and *Brown v. Quik Trip Corp.*, 641 N.W.2d 725 (IA 2002)

²⁰ *Ibid.*



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

²¹ Mental injuries without physical trauma or injury are compensable if the employee suffers a sudden, severe emotional shock traceable to a definite time, place, and cause see *Pathfinder Co. v. Industrial Commission*, 62 Ill. 2d 556 (Ill. 1976). Recovery for nonphysical mental disorders based on stress is limited to employees who can establish that the mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension that all employees must experience; the conditions exist in reality, from an objective standpoint, and the employment conditions were the major contributing cause of the mental disorder. See *Chicago Board of Education v. Industrial Commission*, 169 Ill. App. 3d 459 (Ill. App. Ct. 1st Dist. 1988), *City of Springfield v. Industrial Commission*, 214 Ill. App. 3d 301 (Ill. App. Ct. 4th Dist. 1991) and *Runion v. Industrial Commission* 245 Ill. App. 3d 470 (Ill. App. Ct. 5th Dist. 1993).

²² *Hansen v. Von Duprin, Inc.*, 507 N.E.2d 573 (IN 1987)

²³ *Followill v. Emerson Electric Co.*, 234 Kans. 791 (KS 1984); Kans. Statute 44-508(f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma, or occupational disease as those terms are defined.

²⁴ Per case law, these types of benefits are allowed to some extent. For example, a psychological injury due to witnessing a violent act in the workplace may be considered compensable.

²⁵ Mental impairment is defined as post-traumatic stress disorder (PTSD). Minn. Stat. 176.011

²⁶ Psychological stress recognized as occupational disease for firefighters of a paid fire department or paid peace officers of a police department who are certified under chapter 590 if a direct causal relationship is established.

²⁷ *Smith and Sanders, Inc. v. Peery*, 473 So. 2d 423, 425 (Miss. 1985) Note that a higher standard of evidence is required (clear and convincing) for a mental- mental injury to be compensable.

²⁸ Case law provides that such claims may be compensable if the condition is a result of a "psychological" accident, i.e., an unlooked for, untoward event of employment that causes a psychological injury to employee.

²⁹ Mental injuries (of any kind) are only compensable for first responders. Neb. Stat. 48-101.01 and 48-151.

³⁰ *Ibid.*

³¹ Must establish, by a preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and establish, by a preponderance of the evidence, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.

³² The definition of "injury" or "personal injury" does not include diseases or death resulting from stress without physical manifestation.

³³ *Goyden v. State of New Jersey*, 128 N.J. 54 (NJ 1992)

³⁴ *Ibid.*



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

³⁵ Stress caused by layoff, termination of employment, or any disciplinary action taken.

³⁶ Case law provides that such claims may be compensable if the condition is a result of a "psychological" accident, i.e., an unlooked for, untoward event of employment that causes a psychological injury to employee.

³⁷ Sustaining an injury or occupational disease is not required where the claimant's psychiatric conditions have arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate.

³⁸ The physical injury limitation does not apply to any victim of a crime of violence. 85A O.S. Supp. 2014 Sec. 13

³⁹ To be compensable, worker must establish all of the following: (a) The employment conditions producing the mental disorder exist in a real and objective sense; (b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective, or job performance evaluation actions by the employer or cessation of employment or employment decisions attendant upon ordinary business or financial cycles; (c) There is a diagnosis of a mental or emotional disorder that is generally recognized in the medical or psychological community.

⁴⁰ *Leo v. Workmen's Compensation Appeal Bd. (Charleroi)*, 114 Pa. Commw. 6 (Pa. Commw. Ct. 1988)

⁴¹ Evaluation by authorized psychologist or psychologist only required to establish that stress, mental injury, or illness was aggravated by work-related physical injury. S.C. Code 42-1-160

⁴² (A) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:

(1) 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

(2) The medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence

(B) Stress, mental injuries, heart attacks, strokes, embolisms, or aneurisms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events that are incidental to normal employer/employee relations including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations, except when these actions are taken in an extraordinary and unusual manner.

(C) Stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury may not be found compensable unless the aggravation is:

(1) Admitted by the employer/carrier

(2) Noted in a medical record of an authorized physician that, in the physician's opinion, the condition is at least in part causally related or connected to the injury or accident, whether or not the physician refers the employee for treatment of the condition

(3) Found to be causally related or connected to the accident or injury after evaluation by an authorized psychologist or psychiatrist

(4) Noted in a medical record or report of the employee's physician as causally related or connected to the injury or accident

⁴³ *Anthony v. Fairfax Cnty. Dep't of Family Servs.*, 548 S.E.2d 273, 276 (VA Ct. App. 2001)



Current as of January 16, 2017

COMPENSABILITY FOR WORKERS COMPENSATION MENTAL INJURIES

⁴⁴ To be compensable, a purely psychological injury without a physical injury must be causally related to a sudden fright or shock arising in the course of employment. *Anthony v. Fairfax Cnty. Dep't of Family Servs.*, 548 S.E.2d 273, 276 (VA Ct. App. 2001) In this case, although frightening and unpleasant, the claimant's psychological injury was not compensable because it did not reach the threshold of a traumatic stressor associated with PTSD.

⁴⁵ *Bedini v. Frost*, 165 Vt. 167 (VT 1996)

⁴⁶ The statutes do not limit compensable injuries to ones requiring a physical injury.

⁴⁷ *Bedini v. Frost*, 165 Vt. 167 (VT 1996)

⁴⁸ Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from (a) change of employment duties; (b) conflicts with a supervisor; (c) actual or perceived threat of loss of a job, demotion, or disciplinary action; (d) relationships with supervisors, coworkers, or the public; (e) specific or general job dissatisfaction; (f) workload pressures; (g) subjective perceptions of employment conditions or environment; (h) loss of job or demotion for whatever reason; (i) fear of exposure to chemicals, radiation biohazards, or other perceived hazards; (j) objective or subjective stresses of employment; (k) personnel decisions; (l) actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers. (WAC 296-14-300[1])

⁴⁹ Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed healthcare professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related. (WAC 296-27-0113)

⁵⁰ *School District No. 1 v. ILHR Dept.*, 62 Wis. 2d 370, 377-78 (WI 1974)

⁵¹ Examiners are expected to adhere to professional standards of competent practice established by state licensing boards, national certifying organizations, professional associations, and rules and regulations of the West Virginia WC Guidelines for Psychiatric Impairment. (Rule §85-22-5)

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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Workforce Development

FROM: Marcie Rainbolt, Government Affairs Associate

DATE: November 1, 2017

SUBJECT: Opposition to Assembly Bill 434; relating to worker's compensation claims by certain public safety employees for post-traumatic stress disorder

The Wisconsin Counties Association (WCA) is opposed to Assembly Bill 434 (AB 434). The legislation makes drastic changes to worker's compensation law by mandating that post-traumatic stress disorder (PTSD) claims by public safety employees are presumed to be due to their employment. If enacted, this legislation would result in significant disruption to Wisconsin's historically-stable worker's compensation market. Wisconsin has long prided itself on an effective worker's compensation system which provides a clear process for worker's compensation claims and appeals.

All counties provide worker's compensation coverage to their employees. Under current worker's compensation law, injury is defined as any mental or physical harm due to workplace accidents or diseases. A worker's compensation claim of PTSD would be considered an injury due to mental harm. Current law takes into consideration PTSD claims and accommodates employees who believe the affliction is a result of employment. AB 434 changes the standard for PTSD worker's compensation claims by requiring the county to prove the PTSD is not due to employment.

Unlike physical injury which can be directly linked a specific occurrence, a PTSD claim could be the result of multiple events over multiple years making it incredibly difficult to determine if the claim was a result of county employment. Presuming PTSD is due to county employment is an unfair burden to place on counties and local taxpayers. The current worker's compensation claim process has proven successful in ensuring workers are compensated for workplace injuries and should not be upended without input from stakeholders including employers, employees, and insurers.

Assembly Bill 434
Page 2
November 1, 2017

In addition to placing an unrealistic standard on counties and other employers, AB 434 has the potential to make counties essentially uninsurable in the private marketplace. Because worker's compensation rates are statutorily determined, it would be difficult for the insurance market to react in a timely manner to the new requirements included in AB 434. Without the ability to raise rates, insurers may opt to not provide counties worker's compensation coverage.

PTSD is a legitimate concern for public safety employees and WCA is willing to engage in discussions to ensure employees receive the proper compensation and services they require. However, AB 434 is not a workable remedy and we request the legislature further study the issue before moving forward with legislation that will result in a number of serious unintended consequences.



Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

La Keisha W. Butler
Director of Intergovernmental Relations

City of Milwaukee's Testimony regarding AB-434: Relating to worker's compensation claims by certain public safety employees for post-traumatic stress disorder.
Assembly Committee on Workforce Development
November 1, 2017

The City of Milwaukee recognizes that public safety jobs are becoming increasingly difficult and challenging. We strive to address the needs of our injured public safety personnel in an effective, efficient and compassionate manner. In addition to the benefits provided by state law, our first responders have access to a wide array of services and programs established to address PTSD situations, including a workplace clinic, EAP services, and Care24 (Care24 services is a complimentary benefit that offers employees access to a wide range of health and well-being information and support—seven days a week, 24 hours a day). Registered nurses or Master's-level counselors are available to help with almost any problem ranging from medical and family matters to personal legal, financial, and emotional needs.

This bill appears to follow a national trend to expand and, in some cases, create benefit eligibility and protections for first responders suffering from post-traumatic stress disorder (PTSD) as a result of their jobs. This bill seeks to accomplish three main goals: reduce barriers to receiving help first responders need to heal; increase access to services to treat PTSD effectively and allow those affected to return to work to protect and serve the public; and expand coverage to include repeated exposure to dangerous and/or stressful events.

Legislators must first understand the state-specific provisions that govern employees of the State of Wisconsin and how those provisions differ from those of other states. For example, in some states first responders are precluded from filing stress claims because of the belief that the nature of the work of a first responder is a function of the job. That is not the case in Wisconsin. In Wisconsin, the law provides that a claimant must demonstrate that the stress diagnosis is the result of a situation of greater dimensions than the day to day emotional strain and tension experienced by similarly situated employees. Examples of when this standard has been met in Milwaukee include: the police officer who crossed the blue line in connection with the investigation of the beating of Frank Jude; an officer who witnessed his partner getting hit by a car, resulting in serious injuries; and firefighters responding to the collapse of the O'Donnell Park parking structure.

All of these individuals received worker's compensation benefits as a result of a claim of PTSD. This is because Wisconsin has a long history of allowing mental injuries in the absence of physical injury provided the mental injury arose out of a situation of greater dimensions than the countless emotional strains encountered by other similarly situated employees unlike jurisdictions which significantly inhibited or completely prohibited worker's compensation benefits for mental injuries without a physical cause. Wisconsin law has also always provided workers compensation for the stress or mental injury (PTSD, depression, anxiety) that accompanies a work related physical injury.

Recognizing the fact that there might be an opportunity to strengthen the current provisions in state law, the City recommends a number of amendments to the bill. First, the link to the diagnosis of PTSD should be a specific traumatic experience or situation during which the employee was fulfilling their job duties and it should meet the extraordinary stress standard, established by the Wisconsin Supreme Court in the



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1974 case *School District No. 1. V. DILHR*, in order to distinguish work stress that rises to the level of an injury (without any accompanying physical injury) from stress that is part of the expected and compensated part of a first responder's usual work. Workers compensation claims should not be the result of the public safety employee being investigated for misconduct or any other employment issue. We need to distinguish stress that arises out of fulfilling their job duties vs stress which arises out of a personnel/investigative matter which does not relate to job duties. Matters personal to the employee and not to the job duties like personnel investigations are not work injuries. Additionally, there is the need to tie the diagnosis to an industry recognized standard, such as that of the American Psychiatric Association (APA). This would require that the diagnosis be validated by medical evidence instead of relying on self-reported data. Finally, the City is also recommends language disallowing claims for triggering events known to be non-occupational. Examples of such situations include:

- An officer involved in a shooting, investigated, and cleared but subsequently arrested for sexual assault. He filed a stress claim due to media attention.
- A firefighter who was assigned to the Survive Alive House with students and did not want the assignment filed a stress claim and walked off the job the same day.
- An officer who filed a stress claim for harassment after he found his wife and partner in an intimate encounter at a camp site and stated that his co-workers became aware of the situation.
- An officer filed a stress claim alleging inappropriate communication with a fellow officer. The texting with the other officer included photos of cleavage and genitalia and comments. The female filed the stress claim after her boyfriend discovered the photos on her phone. An internal affairs investigation determined that no charges would be filed since the texting was mutual.

As you can see, these recommended changes would still allow public safety employees to be treated for PTSD as part of a worker's compensation claim while providing important safeguards to the system to prevent abuse.

The City asks that you oppose this bill in its current form.

WMC

WISCONSIN MANUFACTURERS & COMMERCE

TO: Members, Assembly Committee on Workforce Development

FROM: Chris Reader, WMC Director of Health & Human Resources Policy

DATE: November 1, 2017

RE: Opposition to Assembly Bill 434

Chairman Petryk and committee members, thank you for the opportunity to share my opposition to Assembly Bill (AB) 434 today, which relates to PTSD and worker's compensation.

My name is Chris Reader, and I am the Director of Health and Human Resources Policy for Wisconsin Manufacturers and Commerce (WMC). WMC is the state chamber of commerce, the state manufacturers' association and the state safety council. Founded in 1911, WMC is Wisconsin's leading business association dedicated to making Wisconsin the most competitive state in the nation. We work tirelessly to advance policies that are in the public interest of our state and nation. Currently, the association has nearly 3,800 members that include both large and small manufacturers, service companies, local chambers of commerce and specialized trade associations.

I also am a member of the Worker's Compensation Advisory Council, appointed by DWD Secretary Ray Allen, and a member of the Wisconsin Compensation Rating Bureau Governing Board, appointed by Governor Scott Walker.

Worker's compensation started in our country right here in Wisconsin – we were the second state to pass such a law, and the first to have our law upheld as being constitutional. That was in 1911. The grand bargain of worker's compensation, which still exists today, is that workers injured on the job should get the medical treatment they need, at no cost to the injured worker, and employers are held harmless for workplace accidents that were not due to negligence. The grand bargain has worked well for the last 106 years.

Through the Worker's Compensation Advisory Council at DWD, a group of 10 appointees, five employer representatives and five labor representatives, changes to §102 of state statutes are deliberated, and every legislative session the Council negotiates a package of reforms that typically is adopted by the Legislature. The statutory creation of the Council is in §15.227(4), and the directive of the Legislature to the Council is in §102.14(2). Specifically under §102.14(2), the Council is charged with submitting recommendations on changes to §102 each regular session of the Legislature, as well as reporting its views on any pending bill relating to §102. At this time, AB 434 has not yet had the thorough vetting of the Council.

Despite not having an official Council position of the Council on AB 434, I can tell you today that the employer representatives are unified in opposition to the bill, as is WMC and the overall employer community. Creating a presumption that an injury is work related without proving causation is a dangerous path to go down, regardless of field of work.

AB 434 states that any PTSD diagnosis of a public safety employee shall be covered by worker's compensation, regardless of causation, and it further eliminates the current standard from *School District No 1 v. DILHR* (1974), which requires that a worker with a PTSD claim needs to show that the stress they endured on the job is beyond the ordinary stresses and strains that all employees in that position encounter. Both aspects of the bill are troubling.

Generally, Wisconsin has avoided designated particular types of injuries as automatically work related because each injury and situation is unique and the circumstances of an individual's life may involve many other experiences that may also contribute or be the source of their problems.

Beyond dismissing individual life circumstances, AB 434 sets a bad precedent. If enacted, there is no end of occupations that could also come forward and argue for a presumption of injury work relatedness – truck drivers with back problems, fire fighters with respiratory disease, data entry workers with carpal tunnel syndrome, industrial workers with bad knees or shoulders, etc.

Specific to PTSD, we believe the current standard from *School District No 1 v. DILHR* has served our state well since 1974 and should be maintained. Overturning the standard will add costs to employers and will necessarily cause insurance rates to increase in order to cover the expense of proving causation of injuries.

Finally, setting a presumption of work relatedness is going to be abused. If the burden is on the employer to prove a negative, some workers will file a claim and force the employer to try and disprove the causation of the injury.

The idea that workers should get help and treatment when injured on the job is something employers support – and that includes treating PTSD that happens from work related activities. I encourage the committee to not support AB 434, but instead to work with the Advisory Council on possible solutions to the issue at hand that do not upend 43 years of precedent on PTSD and 106 years of precedent on workplace injury causation.

Thank you for your time and consideration.