
ENGROSSED SUBSTITUTE HOUSE BILL 1833

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Pettigrew, Seaquist, Upthegrove, Morrell, Kessler, P. Sullivan, Williams, Kenney, Haler, Ericksen, Moeller, Sells, Dunn, Rolfes, Lantz, McCoy, Lovick, Jarrett, Strow, Hurst, Springer, Campbell, Goodman, Simpson, Pearson, Curtis, Rodne, Schual-Berke, McDermott, Ormsby and Chase)

READ FIRST TIME 2/28/07.

1 AN ACT Relating to occupational diseases affecting firefighters;
2 amending RCW 51.32.185, 51.52.120, and 51.52.130; and creating a new
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds and declares:

6 (1) By reason of their employment, firefighters are required to
7 work in the midst of, and are subject to, smoke, fumes, infectious
8 diseases, and toxic and hazardous substances;

9 (2) Firefighters enter uncontrolled environments to save lives,
10 provide emergency medical services, and reduce property damage and are
11 frequently not aware of the potential toxic and carcinogenic
12 substances, and infectious diseases that they may be exposed to;

13 (3) Harmful effects caused by firefighters' exposure to hazardous
14 substances, whether cancer, infectious disease, heart or respiratory
15 disease, may develop very slowly, manifesting themselves years after
16 exposure;

17 (4) Firefighters frequently and at unpredictable intervals perform
18 job duties under strenuous physical conditions unique to their
19 employment when engaged in firefighting activities; and

1 (5) Cardiovascular disease is exacerbated by firefighting duties
2 and firefighting increases the incidence of cardiovascular disease and
3 heart injuries in firefighters.

4 **Sec. 2.** RCW 51.32.185 and 2002 c 337 s 2 are each amended to read
5 as follows:

6 (1) In the case of fire fighters as defined in RCW 41.26.030(4)
7 (a), (b), and (c) who are covered under Title 51 RCW and fire fighters,
8 including supervisors, employed on a full-time, fully compensated basis
9 as a fire fighter of a private sector employer's fire department that
10 includes over fifty such fire fighters, there shall exist a prima facie
11 presumption that: (a) Respiratory disease; (b) (~~heart problems that~~
12 ~~are experienced within seventy two hours of exposure to smoke, fumes,~~
13 ~~or toxic substances~~) any heart problems, experienced within seventy-
14 two hours of exposure to smoke, fumes, or toxic substances, or
15 experienced within twenty-four hours of strenuous physical exertion due
16 to firefighting activities; (c) cancer; and (d) infectious diseases are
17 occupational diseases under RCW 51.08.140. This presumption of
18 occupational disease may be rebutted by a preponderance of the
19 evidence. Such evidence may include, but is not limited to, use of
20 tobacco products, physical fitness and weight, lifestyle, hereditary
21 factors, and exposure from other employment or nonemployment
22 activities.

23 (2) The presumptions established in subsection (1) of this section
24 shall be extended to an applicable member following termination of
25 service for a period of three calendar months for each year of
26 requisite service, but may not extend more than sixty months following
27 the last date of employment.

28 (3) The presumption established in subsection (1)(c) of this
29 section shall only apply to any active or former fire fighter who has
30 cancer that develops or manifests itself after the fire fighter has
31 served at least ten years and who was given a qualifying medical
32 examination upon becoming a fire fighter that showed no evidence of
33 cancer. The presumption within subsection (1)(c) of this section shall
34 only apply to prostate cancer diagnosed prior to the age of fifty,
35 primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's
36 lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple
37 myeloma, testicular cancer, and kidney cancer.

1 (4) The presumption established in subsection (1)(d) of this
2 section shall be extended to any fire fighter who has contracted any of
3 the following infectious diseases: Human immunodeficiency
4 virus/acquired immunodeficiency syndrome, all strains of hepatitis,
5 meningococcal meningitis, or mycobacterium tuberculosis.

6 (5) Beginning July 1, 2003, this section does not apply to a fire
7 fighter who develops a heart or lung condition and who is a regular
8 user of tobacco products or who has a history of tobacco use. The
9 department, using existing medical research, shall define in rule the
10 extent of tobacco use that shall exclude a fire fighter from the
11 provisions of this section.

12 (6) For purposes of this section, "firefighting activities" means
13 fire suppression, fire prevention, emergency medical services, rescue
14 operations, hazardous materials response, aircraft rescue, and training
15 and other assigned duties related to emergency response.

16 (7)(a) When a determination involving the presumption established
17 in this section is appealed to the board of industrial insurance
18 appeals and the final decision allows the claim for benefits, the board
19 of industrial insurance appeals shall order that all reasonable costs
20 of the appeal, including attorney fees and witness fees, be paid to the
21 firefighter or his or her beneficiary by the opposing party.

22 (b) When a determination involving the presumption established in
23 this section is appealed to any court and the final decision allows the
24 claim for benefits, the court shall order that all reasonable costs of
25 the appeal, including attorney fees and witness fees, be paid to the
26 firefighter or his or her beneficiary by the opposing party.

27 (c) When reasonable costs of the appeal must be paid by the
28 department under this section in a state fund case, the costs shall be
29 paid from the accident fund and charged to the costs of the claim.

30 (8)(a) If an employer requests reconsideration of a department
31 order allowing benefits under this section and the firefighter's
32 medical provider has made a determination that the firefighter is
33 terminally ill, temporary total disability compensation or medical aid
34 benefits granted to the firefighter by the order under reconsideration
35 must continue while the reconsideration is pending, subject to the
36 requirements of RCW 51.32.240(4).

37 (b) If an employer appeals to the board of industrial insurance
38 appeals a department order allowing benefits under this section and the

1 firefighter's medical provider has made a determination that the
2 firefighter is terminally ill, temporary total disability compensation
3 or medical aid benefits granted to the firefighter by the order under
4 appeal must continue while the appeal is pending, subject to the
5 requirements of RCW 51.32.240(4).

6 **Sec. 3.** RCW 51.52.120 and 2003 c 53 s 285 are each amended to read
7 as follows:

8 (1) It shall be unlawful for an attorney engaged in the
9 representation of any worker or beneficiary to charge for services in
10 the department any fee in excess of a reasonable fee, of not more than
11 thirty percent of the increase in the award secured by the attorney's
12 services. Such reasonable fee shall be fixed by the director or the
13 director's designee for services performed by an attorney for such
14 worker or beneficiary, if written application therefor is made by the
15 attorney, worker, or beneficiary within one year from the date the
16 final decision and order of the department is communicated to the party
17 making the application.

18 (2) If, on appeal to the board, the order, decision, or award of
19 the department is reversed or modified and additional relief is granted
20 to a worker or beneficiary, or in cases where a party other than the
21 worker or beneficiary is the appealing party and the worker's or
22 beneficiary's right to relief is sustained by the board, the board
23 shall fix a reasonable fee for the services of his or her attorney in
24 proceedings before the board if written application therefor is made by
25 the attorney, worker, or beneficiary within one year from the date the
26 final decision and order of the board is communicated to the party
27 making the application. In fixing the amount of such attorney's fee,
28 the board shall take into consideration the fee allowed, if any, by the
29 director, for services before the department, and the board may review
30 the fee fixed by the director. Any attorney's fee set by the
31 department or the board may be reviewed by the superior court upon
32 application of such attorney, worker, or beneficiary. The department
33 or self-insured employer, as the case may be, shall be served a copy of
34 the application and shall be entitled to appear and take part in the
35 proceedings. Where the board, pursuant to this section, fixes the
36 attorney's fee, it shall be unlawful for an attorney to charge or

1 receive any fee for services before the board in excess of that fee
2 fixed by the board.

3 (3) In an appeal to the board involving the presumption established
4 under RCW 51.32.185, the attorney's fee shall be payable as set forth
5 under RCW 51.32.185.

6 (4) Any person who violates this section is guilty of a
7 misdemeanor.

8 **Sec. 4.** RCW 51.52.130 and 1993 c 122 s 1 are each amended to read
9 as follows:

10 (1) If, on appeal to the superior or appellate court from the
11 decision and order of the board, said decision and order is reversed or
12 modified and additional relief is granted to a worker or beneficiary,
13 or in cases where a party other than the worker or beneficiary is the
14 appealing party and the worker's or beneficiary's right to relief is
15 sustained, a reasonable fee for the services of the worker's or
16 beneficiary's attorney shall be fixed by the court. In fixing the fee
17 the court shall take into consideration the fee or fees, if any, fixed
18 by the director and the board for such attorney's services before the
19 department and the board. If the court finds that the fee fixed by the
20 director or by the board is inadequate for services performed before
21 the department or board, or if the director or the board has fixed no
22 fee for such services, then the court shall fix a fee for the
23 attorney's services before the department, or the board, as the case
24 may be, in addition to the fee fixed for the services in the court. If
25 in a worker or beneficiary appeal the decision and order of the board
26 is reversed or modified and if the accident fund or medical aid fund is
27 affected by the litigation, or if in an appeal by the department or
28 employer the worker or beneficiary's right to relief is sustained, or
29 in an appeal by a worker involving a state fund employer with twenty-
30 five employees or less, in which the department does not appear and
31 defend, and the board order in favor of the employer is sustained, the
32 attorney's fee fixed by the court, for services before the court only,
33 and the fees of medical and other witnesses and the costs shall be
34 payable out of the administrative fund of the department. In the case
35 of self-insured employers, the attorney fees fixed by the court, for
36 services before the court only, and the fees of medical and other

1 witnesses and the costs shall be payable directly by the self-insured
2 employer.

3 (2) In an appeal to the superior or appellate court involving the
4 presumption established under RCW 51.32.185, the attorney's fee shall
5 be payable as set forth under RCW 51.32.185.

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