

WSR 22-20-087  
PERMANENT RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES

[Filed October 4, 2022, 8:14 a.m., effective November 4, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to extend the occupational disease presumption to law enforcement officers, emergency medical technicians (EMTs), and fire investigators, as well as update the list of covered conditions. This rule making also allows a presumption of occupational disease for posttraumatic stress disorder for firefighters, EMTs, and law enforcement officers.

Citation of Rules Affected by this Order: Amending WAC 296-14-310, 269-14-325, and 296-14-330.

Statutory Authority for Adoption: RCW 51.04.020 and 51.04.030.

Other Authority: RCW 51.32.185.

Adopted under notice filed as WSR 22-15-088 on July 19, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 4, 2022.

Joel Sacks  
Director

## OTS-2137.1

AMENDATORY SECTION (Amending WSR 03-12-046, filed 5/30/03, effective 7/1/03)

**WAC 296-14-310 When does a presumption of occupational disease for certain members of firefighters' and law enforcement officers' retirement systems apply?** RCW 51.32.185 specifies a presumption that certain medical conditions are occupational diseases (~~for firefighters~~). A presumption of occupational disease applies to firefighters and emergency medical technicians (EMTs) as defined in RCW 41.26.030 (17) (a), (b), (c), and (h) and fire investigators. The presumption also applies to law enforcement officers as defined in RCW 41.26.030 (19) (b), (c), and (e).

(1) For firefighters and EMTs those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; respiratory disease;

specific cancers (~~(as defined by RCW 51.32.185; and)~~); infectious diseases (~~(as defined by RCW 51.32.185.)~~); and posttraumatic stress disorder (PTSD).

(2) For fire investigators those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; respiratory disease; specific cancers; and infectious diseases.

(3) For law enforcement officers those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion in the line of duty; infectious diseases; and PTSD.

(4) The presumption extends to covered members after the last date of employment for a period of three calendar months for each year of service. The presumption may not extend more than sixty months after the last date of employment.

(5) For consideration of a PTSD presumption, the active or former firefighter or law enforcement officer must work on or after July 7, 2018, and serve at least ten years before the PTSD develops.

(6) For consideration of a cancer presumption, the active or former firefighter or fire investigator must serve at least ten years before the cancer develops.

(7) For claims filed on or after July 1, 2003, the presumption may not apply to heart or lung conditions (~~(if a firefighter is a)~~) for users of tobacco products.

(8) When the presumption does not apply, the claim is not automatically denied. However, the burden is on the worker to prove that the condition is (~~(a)~~) otherwise allowable as an injury or occupational disease.

[Statutory Authority: RCW 51.04.020, 51.32.185. WSR 03-12-046, § 296-14-310, filed 5/30/03, effective 7/1/03.]

AMENDATORY SECTION (Amending WSR 03-12-046, filed 5/30/03, effective 7/1/03)

**WAC 296-14-325 When does the presumption apply to firefighters, emergency medical technicians (EMTs), fire investigators and law enforcement officers who are former smokers with heart or lung conditions?** (1) **Heart problems:** The presumption for heart problems (~~(will apply)~~) applies if a firefighter or EMT as defined in RCW 41.26.030 (17) (a), (b), (c), and (h) or fire investigator is a former smoker and last smoked two years or more prior to the cardiac event. The presumption for heart problems also applies if a law enforcement officer as defined in RCW 41.26.030 (19) (b), (c), and (e) is a former smoker and last smoked two years or more prior to the cardiac event.

(2) **Lung conditions:** The presumption for lung conditions in firefighters, EMTs, and fire investigators will apply:

(a) For **asthma** if (~~(the firefighter is)~~) they are a former smoker (~~(who)~~) and last smoked five years or more prior to the date of manifestation of the disease; or

(b) For (**COPD**) **chronic obstructive pulmonary disease/emphysema/chronic bronchitis** if (~~(the firefighter is)~~) they are a former smoker

who last smoked fifteen years or more prior to the date of manifestation of the disease; or

(c) For **lung cancer** if ~~((the firefighter is))~~ they are a former smoker who last smoked fifteen years or more prior to the date of manifestation of the disease.

[Statutory Authority: RCW 51.04.020, 51.32.185. WSR 03-12-046, § 296-14-325, filed 5/30/03, effective 7/1/03.]

AMENDATORY SECTION (Amending WSR 03-12-046, filed 5/30/03, effective 7/1/03)

**WAC 296-14-330 What tobacco use ~~((shall))~~ may exclude a firefighter, emergency medical technician (EMT), fire investigator, or law enforcement officer from a presumption of coverage?** The following table summarizes the situations listed in WAC 296-14-310 through 296-14-325 under which a presumption of coverage ~~((shall or shall not))~~ may not apply for firefighters and EMTs as defined in RCW 41.26.030 (17) (a), (b), (c), and (h) and fire investigators; and law enforcement officers as defined in RCW 41.26.030 (19) (b), (c), and (e) due to tobacco use.

Medical condition	Presumptions shall not apply	Presumption shall apply
Heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substance	<u>Firefighters, EMTs, fire investigators, and law enforcement officers that are current smokers</u>	Firefighters, EMTs, fire investigators, and law enforcement officers that never smoked tobacco
	<u>Firefighters, EMTs, fire investigators, and law enforcement officers that are former smokers <del>((who))</del> and last smoked less than two years prior to the cardiac event</u>	Firefighters, EMTs, fire investigators, and law enforcement officers that are former smokers <del>((who))</del> and last smoked two years or <b>more</b> prior to the cardiac event
Asthma	<u>Firefighters, EMTs, and fire investigators that are current smokers</u>	Firefighters, EMTs, and fire investigators that never smoked tobacco
	<u>Firefighters, EMTs, and fire investigators that are former smokers <del>((who))</del> and last smoked less than five years before date of manifestation of the disease</u>	Firefighters, EMTs, and fire investigators that are former smokers <del>((who))</del> and last smoked five years or <b>more</b> before date of manifestation of the disease

Medical condition	Presumptions shall not apply	Presumption shall apply
<p><del>((COPD))</del>                      Chronic obstructive pulmonary disease/                      emphysema/                      chronic bronchitis</p>	<p><u>Firefighters, EMTs, and fire investigators that are current smokers</u></p>	<p>Firefighters, EMTs, and fire investigators that never smoked tobacco</p>
	<p><u>Firefighters, EMTs, and fire investigators that are former smokers <del>((who))</del> and last smoked <b>less</b> than fifteen years before date of manifestation of the disease</u></p>	<p>Firefighters, EMTs, and fire investigators that are former smokers <del>((who))</del> and last smoked <b>more</b> before date of manifestation of the disease</p>
<p>Lung cancer</p>	<p><u>Firefighters, EMTs, and fire investigators that are current smokers</u></p>	<p>Firefighters, EMTs, and fire investigators that never smoked tobacco</p>
	<p><u>Firefighters, EMTs, and fire investigators that are former smokers <del>((who))</del> and last smoked <b>less</b> than fifteen years before date of manifestation of the disease</u></p>	<p>Firefighters, EMTs, and fire investigators that are former smokers <del>((who))</del> and last smoked <b>more</b> before date of manifestation of the disease</p>

[Statutory Authority: RCW 51.04.020, 51.32.185. WSR 03-12-046, § 296-14-330, filed 5/30/03, effective 7/1/03.]