
SENATE BILL 5849

State of Washington

66th Legislature

2019 Regular Session

By Senators Kuderer, Darneille, Conway, Das, Fortunato, Hobbs, Keiser, Palumbo, and Van De Wege

Read first time 02/06/19. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to the presumption of occupational disease for
2 purposes of workers' compensation by adding medical conditions to the
3 presumption, extending the presumption to certain publicly employed
4 firefighters and investigators and law enforcement, addressing the
5 qualifying medical examination, and creating an advisory committee;
6 and amending RCW 51.32.185.

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

8 **Sec. 1.** RCW 51.32.185 and 2018 c 264 s 3 are each amended to
9 read as follows:

10 (1)(a) In the case of firefighters as defined in RCW
11 41.26.030(~~((16))~~) (17) (a), (b), (~~and~~) (c), and (h) who are covered
12 under this title and firefighters, including supervisors, employed on
13 a full-time, fully compensated basis as a firefighter of a private
14 sector employer's fire department that includes over fifty such
15 firefighters, and public employee fire investigators, there shall
16 exist a prima facie presumption that: (i) Respiratory disease; (ii)
17 any heart problems, experienced within seventy-two hours of exposure
18 to smoke, fumes, or toxic substances, or experienced within twenty-
19 four hours of strenuous physical exertion due to firefighting
20 activities; (iii) cancer; and (iv) infectious diseases are
21 occupational diseases under RCW 51.08.140.

1 (b) In the case of firefighters as defined in RCW
2 41.26.030(~~((16))~~) (17) (a), (b), (c), and (h) and firefighters,
3 including supervisors, employed on a full-time, fully compensated
4 basis as a firefighter of a private sector employer's fire department
5 that includes over fifty such firefighters, and law enforcement
6 officers as defined in RCW 41.26.030(~~((18))~~) (19) (b), (c), and (e),
7 who are covered under this title, there shall exist a prima facie
8 presumption that posttraumatic stress disorder is an occupational
9 disease under RCW 51.08.140.

10 (c) In the case of law enforcement officers as defined in RCW
11 41.26.030(19) (b), (c), and (e) who are covered under Title 51 RCW,
12 there shall exist a prima facie presumption that: (i) Any heart
13 problems, experienced within seventy-two hours of exposure to smoke,
14 fumes, or toxic substances, or experienced within twenty-four hours
15 of strenuous physical exertion in the line of duty; and (ii)
16 infectious diseases are occupational diseases under RCW 51.08.140.

17 (d) This presumption of occupational disease established in (a)
18 (~~and~~), (b), and (c) of this subsection may be rebutted by a
19 preponderance of the evidence. Such evidence may include, but is not
20 limited to, use of tobacco products, physical fitness and weight,
21 lifestyle, hereditary factors, and exposure from other employment or
22 nonemployment activities.

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

28 (3) (a) The presumption established in subsection (1)(a)(iii) of
29 this section shall only apply to any active or former firefighter or
30 fire investigator who:

31 (i) Has cancer that develops or manifests itself after the
32 firefighter or fire investigator has served at least ten years; and
33 (~~who~~)

34 (ii)(A) Was given a qualifying medical examination upon becoming
35 a firefighter or fire investigator that showed no evidence of cancer;
36 or

37 (B)(I) For a firefighter or fire investigator who became a
38 firefighter or fire investigator on or after the effective date of
39 this section, the employer did not provide a qualifying medical
40 examination upon becoming a firefighter or fire investigator; or

1 (II) For a firefighter or fire investigator who became a
2 firefighter or fire investigator before the effective date of this
3 section, the employer did not provide a qualifying medical
4 examination upon becoming a firefighter or fire investigator and the
5 employer provides a qualifying medical examination on or before July
6 1, 2020. If a firefighter or fire investigator described in this
7 subsection (3)(a)(ii)(B)(II) did not receive a qualifying medical
8 examination before July 1, 2020, or is diagnosed with a cancer listed
9 in (b) of this subsection at the time of the qualifying medical
10 examination under this subsection (3)(a)(ii)(B)(II) and otherwise
11 meets the requirements of this section, the presumption established
12 in subsection (1)(a)(iii) of this section applies. ((The presumption
13 within subsection (1)(a)(iii) of this section shall only apply to))

14 (b) The presumption established in subsection (1)(a)(iii) of this
15 section shall only apply to the following cancers: Prostate cancer
16 diagnosed prior to the age of fifty, primary brain cancer, malignant
17 melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter
18 cancer, colorectal cancer, multiple myeloma, testicular cancer,
19 ((and)) kidney cancer, mesothelioma, stomach cancer, nonmelanoma skin
20 cancer, breast cancer in women, and cervical cancer.

21 (4) The presumption established in subsection (1)(a)(iv) and
22 (c)(ii) of this section shall be extended to any firefighter, fire
23 investigator, or law enforcement officer who has contracted any of
24 the following infectious diseases: Human immunodeficiency virus/
25 acquired immunodeficiency syndrome, all strains of hepatitis,
26 meningococcal meningitis, or mycobacterium tuberculosis.

27 (5) The presumption established in subsection (1)(b) of this
28 section only applies to active or former firefighters as defined in
29 RCW 41.26.030(~~((16))~~) (17) (a), (b), (c), and (h) and firefighters,
30 including supervisors, employed on a full-time, fully compensated
31 basis as a firefighter of a private sector employer's fire department
32 that includes over fifty such firefighters, and law enforcement
33 officers as defined in RCW 41.26.030(~~((18))~~) (19) (b), (c), and (e)
34 who have posttraumatic stress disorder that develops or manifests
35 itself after the individual has served at least ten years.

36 (6) If the employer does not provide the psychological exam as
37 specified in RCW 51.08.142 and the employee otherwise meets the
38 requirements for the presumption established in subsection (1)(b) of
39 this section, the presumption applies.

1 (7) Beginning July 1, 2003, this section does not apply to a
2 firefighter, fire investigator, or law enforcement officer who
3 develops a heart or lung condition and who is a regular user of
4 tobacco products or who has a history of tobacco use. The department,
5 using existing medical research, shall define in rule the extent of
6 tobacco use that shall exclude a firefighter, fire investigator, or
7 law enforcement officer from the provisions of this section.

8 (8) For purposes of this section, "firefighting activities" means
9 fire suppression, fire prevention, fire investigation, emergency
10 medical services, rescue operations, hazardous materials response,
11 aircraft rescue, and training and other assigned duties related to
12 emergency response.

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

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

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

29 (10) (a) The director must create an advisory committee on
30 occupational disease presumptions. The purposes of the advisory
31 committee are to review scientific evidence and to make
32 recommendations to the legislature on additional diseases or
33 disorders for inclusion under this section.

34 (b) (i) The advisory committee shall be composed of five voting
35 members, appointed by the director as follows:

36 (A) Two epidemiologists;

37 (B) Two preventive medicine physicians; and

38 (C) One industrial hygienist.

1 (ii) The research director of the department's safety and health
2 assessment and research for prevention program shall serve as the
3 advisory committee nonvoting chair.

4 (iii) Members serve for a term of four years and may be
5 reappointed. Members shall not be compensated for their work on the
6 advisory committee. As a condition of appointment, voting members and
7 the chair must have no past or current financial or personal
8 conflicts of interest related to the advisory committee activities.
9 Voting members of the advisory committee may not be current employees
10 of the department.

11 (c) The chair or ranking member of the appropriate committee or
12 committees of the legislature may initiate a request for the advisory
13 committee to review scientific evidence and to make recommendations
14 to the legislature on specific disorders or diseases, or specific
15 occupations, for inclusion under this section by notifying the
16 director.

17 (d) The process of developing an advisory committee
18 recommendation must include a thorough review of the scientific
19 literature on the disease or disorder, relevant exposures, and
20 strength of the association between the specific occupations and the
21 disease or disorder proposed for inclusion in this section. The
22 advisory committee must give consideration to the relevance, quality,
23 and quantity of the literature and data. The advisory committee may
24 consult nationally recognized experts or subject matter experts in
25 developing its recommendations. The advisory committee must provide a
26 recommendation to the legislature within the earlier of one hundred
27 eighty days of the request or when the advisory committee reaches a
28 consensus recommendation.

29 (e) Each recommendation must include a written description of the
30 scientific evidence and supporting information relied upon to assess
31 the causal relationship between the occupation and health condition
32 proposed for inclusion under this section. Estimates of the number of
33 Washington workers at risk, the prevalence of the disease or
34 disorder, and the medical treatment and disability costs should, if
35 available, be included with the recommendation.

36 (f) The recommendation must be made by a majority of advisory
37 committee's voting members. Any member of the advisory committee may
38 provide a written dissent as an appendix to the committee's
39 recommendation.

1 (g) The department's safety and health assessment and research
2 for prevention program shall provide organizational and scientific
3 support to the advisory committee. Scientific support must include
4 for consideration of the advisory committee preliminary written
5 reviews of the scientific literature on the disease and disorder,
6 relevant exposures, and strength of the association between the
7 specific occupations and the health condition or disorders proposed
8 for inclusion in this section.

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