

**WSR 22-15-088**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed July 19, 2022, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-23-081.

Title of Rule and Other Identifying Information: Occupational disease presumptions for firefighters, emergency medical technicians, fire investigators, and law enforcement officers, under chapter 296-14 WAC, Industrial insurance. WAC 296-14-310, 296-14-325, and 296-14-330.

Hearing Location(s): On August 24, 2022, at 9:00 a.m., Zoom hearing. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone +1 253-215-8782 US (Tacoma). Find your local number: <https://lni-wa-gov.zoom.us/u/kdFrdfe0fg>.

The Zoom [hearing] starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: October 4, 2022.

Submit Written Comments to: Jordan Ely, Department of Labor and Industries (L&I), Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email [Jordan.Ely@Lni.wa.gov](mailto:Jordan.Ely@Lni.wa.gov), fax 360-902-5029, by August 24, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Ashley Misener, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email [Ashley.Misener@Lni.wa.gov](mailto:Ashley.Misener@Lni.wa.gov), by August 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on legislation passed in 2018 and 2019, this rule making proposes to amend these WAC sections:

WAC 296-14-310 When does a presumption of occupational disease for certain members of firefighters' and law enforcement officers' retirement systems apply? Emergency medical technicians (EMTs), fire investigators, and law enforcement officers were added as covered under the presumption for certain disease[s] identified in RCW 51.32.185 (i.e. respiratory diseases, heart problems related to exposure to smoke or toxins). For each of these job classes, specific medical conditions are now covered under this presumption. Posttraumatic stress disorder was also added as a coverable condition for firefighters, EMTs, and law enforcement officers under the presumption.

WAC 296-14-325 When does a presumption apply to firefighters, emergency medical technicians (EMTs), fire investigators and law enforcement officers who are former smokers with heart or lung conditions? EMTs, fire investigators, and law enforcement officers were added under the presumption for certain diseases identified in RCW 51.32.185. For law enforcement officers, the presumption for heart problems was also added if they were a former smoker and last smoked two years or more prior to the cardiac event.

WAC 296-14-330 What tobacco use may exclude a firefighter, emergency medical technician (TMT), fire investigator, or law enforcement officer from a presumption of coverage? The updates will include all covered occupations and accepted medical conditions currently specified in RCW 51.32.185. EMTs, fire investigators, and law enforcement officers were added as job classes where the presumption of coverage may not apply due to specific tobacco use.

Reasons Supporting Proposal: Legislation passed during the 2018 and 2019 sessions (chapter 264, Laws of 2018 (SSB 6214), and chapter 133, Laws of 2019, (HB 1913)) resulted in updates to RCW 51.32.185.

This rule making proposes to amend existing rules to align with the statute and clarify presumptive occupational disease coverage for certain firefighters, law enforcement officers, and emergency medical technicians covered under workers' compensation. SSB 6214 allowed industrial insurance coverage under RCW 51.32.185 for posttraumatic stress disorders of law enforcement and firefighters. HB 1913 extended the presumption of occupational disease for certain firefighters' supervisor, fire investigators, and law enforcement officers (definitions of these types of positions that can receive the presumption where updated by both bills).

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.185.

Statute Being Implemented: RCW 51.32.185.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jordan Ely, Tumwater, Washington, 360-902-4616; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) because the rule is adopting, without material change, language from RCW 51.32.185 as amended by SSB 6214 (2018) and HB 1913 (2019).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The rule is exempt in its entirety, it is adopting without material change language from RCW 51.32.185 as amended by SSB 6214 (2018) and HB 1913 (2019).

July 19, 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 ((an)) 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>	<u>Firefighters, EMTs, fire investigators, and law enforcement officers that never smoked tobacco</u>
	<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>	<u>Firefighters, EMTs, fire investigators, and law enforcement officers that are former smokers <del>((who))</del> and last smoked two years or more prior to the cardiac event</u>

Medical condition	Presumptions shall not apply	Presumption shall apply
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 ((who)) and last smoked less than five years before date of manifestation of the disease</u>	<u>Firefighters, EMTs, and fire investigators that are former smokers ((who)) and last smoked five years or more before date of manifestation of the disease</u>
((COPD)) Chronic obstructive pulmonary disease/ emphysema/ chronic bronchitis	<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 ((who)) and last smoked less than fifteen years before date of manifestation of the disease</u>	<u>Firefighters, EMTs, and fire investigators that are former smokers ((who)) and last smoked fifteen years or more before date of manifestation of the disease</u>
Lung cancer	<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 ((who)) and last smoked less than fifteen years before date of manifestation of the disease</u>	<u>Firefighters, EMTs, and fire investigators that are former smokers ((who)) and last smoked fifteen years or more before date of manifestation of the disease</u>

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