

D R A F T

SUMMARY

Adds to cancers covered by rebuttable presumption of occupational disease for eligible nonvolunteer firefighters.

A BILL FOR AN ACT

Relating to occupational diseases of nonvolunteer firefighters; amending ORS 656.802.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 656.802 is amended to read:

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

1 contributing cause of the disease.

2 (b) If the occupational disease claim is based on the worsening of a pre-
3 existing disease or condition pursuant to ORS 656.005 (7), the worker must
4 prove that employment conditions were the major contributing cause of the
5 combined condition and pathological worsening of the disease.

6 (c) Occupational diseases shall be subject to all of the same limitations
7 and exclusions as accidental injuries under ORS 656.005 (7).

8 (d) Existence of an occupational disease or worsening of a preexisting
9 disease must be established by medical evidence supported by objective
10 findings.

11 (e) Preexisting conditions shall be deemed causes in determining major
12 contributing cause under this section.

13 (3) Notwithstanding any other provision of this chapter, a mental disorder
14 is not compensable under this chapter unless the worker establishes all of
15 the following:

16 (a) The employment conditions producing the mental disorder exist in a
17 real and objective sense.

18 (b) The employment conditions producing the mental disorder are condi-
19 tions other than conditions generally inherent in every working situation or
20 reasonable disciplinary, corrective or job performance evaluation actions by
21 the employer, or cessation of employment or employment decisions attendant
22 upon ordinary business or financial cycles.

23 (c) There is a diagnosis of a mental or emotional disorder which is gen-
24 erally recognized in the medical or psychological community.

25 (d) There is clear and convincing evidence that the mental disorder arose
26 out of and in the course of employment.

27 (4)(a) Death, disability or impairment of health of firefighters of any pol-
28 itical division who have completed five or more years of employment as
29 firefighters, caused by any disease of the lungs or respiratory tract,
30 hypertension or cardiovascular-renal disease, and resulting from their em-
31 ployment as firefighters is an "occupational disease." Any condition or

1 impairment of health arising under this subsection shall be presumed to re-
2 sult from a firefighter's employment. However, any such firefighter must
3 have taken a physical examination upon becoming a firefighter, or subse-
4 quently thereto, which failed to reveal any evidence of such condition or
5 impairment of health which preexisted employment. Denial of a claim for any
6 condition or impairment of health arising under this subsection must be on
7 the basis of clear and convincing medical evidence that the cause of the
8 condition or impairment is unrelated to the firefighter's employment.

9 (b) Notwithstanding ORS 656.027 (6), a city that provides a disability or
10 retirement system for firefighters by ordinance or charter that is not subject
11 to this chapter, when accepting and processing claims for death, disability
12 or impairment of health from firefighters covered by the disability or re-
13 tirement system, shall apply:

14 (A) The provisions of this subsection; and

15 (B) For claims filed under this subsection, the time limitations for filing
16 claims that are set forth in ORS 656.807 (1) and (2).

17 (5)(a) Death, disability or impairment of health of a nonvolunteer fire-
18 fighter employed by a political division or subdivision who has completed
19 five or more years of employment as a nonvolunteer firefighter is an occu-
20 pational disease if the death, disability or impairment of health:

21 (A) Is caused by brain cancer, colon cancer, stomach cancer, testicular
22 cancer, prostate cancer, multiple myeloma, non-Hodgkin's lymphoma, cancer
23 of the throat or mouth, rectal cancer, breast cancer, [or] leukemia, **bladder**
24 **cancer or gynecologic cancer of the uterus, fallopian tubes, ovaries,**
25 **cervix, vagina or vulva;**

26 (B) Results from the firefighter's employment as a nonvolunteer fire-
27 fighter; and

28 (C) Is first diagnosed by a physician after July 1, 2009.

29 (b) Any condition or impairment of health arising under this subsection
30 is presumed to result from the firefighter's employment. Denial of a claim for
31 any condition or impairment of health arising under this subsection must be

1 on the basis of clear and convincing medical evidence that the condition or
2 impairment was not caused or contributed to in material part by the
3 firefighter's employment.

4 (c) Notwithstanding paragraph (b) of this subsection, the presumption es-
5 tablished under paragraph (b) of this subsection may be rebutted by clear and
6 convincing evidence that the use of tobacco by the nonvolunteer firefighter
7 is the major contributing cause of the cancer.

8 (d) The presumption established under paragraph (b) of this subsection
9 does not apply to prostate cancer if the cancer is first diagnosed by a phy-
10 sician after the firefighter has reached the age of 55. However, nothing in
11 this paragraph affects the right of a firefighter to establish the
12 compensability of prostate cancer without benefit of the presumption.

13 (e) The presumption established under paragraph (b) of this subsection
14 does not apply to claims filed more than 84 months following the termination
15 of the nonvolunteer firefighter's employment as a nonvolunteer firefighter.
16 However, nothing in this paragraph affects the right of a firefighter to es-
17 tablish the compensability of the cancer without benefit of the presumption.

18 (f) The presumption established under paragraph (b) of this subsection
19 does not apply to volunteer firefighters.

20 (g) Nothing in this subsection affects the provisions of subsection (4) of
21 this section.

22 (h) For purposes of this subsection, "nonvolunteer firefighter" means a
23 firefighter who performs firefighting services and receives salary, hourly
24 wages equal to or greater than the state minimum wage, or other compen-
25 sation except for room, board, lodging, housing, meals, stipends, reimburse-
26 ment for expenses or nominal payments for time and travel, regardless of
27 whether any such compensation is subject to federal, state or local taxation.
28 "Nominal payments for time and travel" includes, but is not limited to,
29 payments for on-call time or time spent responding to a call or similar non-
30 cash benefits.

31 (6) Notwithstanding ORS 656.027 (6), any city providing a disability and

1 retirement system by ordinance or charter for firefighters and police officers
2 not subject to this chapter shall apply the presumptions established under
3 subsection (5) of this section when processing claims for firefighters covered
4 by the system.

5 (7)(a) As used in this subsection:

6 (A) “Acute stress disorder” has the meaning given that term in the
7 DSM-5.

8 (B) “Covered employee” means an individual who, on the date a claim is
9 filed under this chapter:

10 (i) Was employed for at least five years by, or experienced a single trau-
11 matic event that satisfies the criteria set forth in the DSM-5 as Criterion A
12 for diagnosing post-traumatic stress disorder while employed by, the state,
13 a political subdivision of the state, a special government body, as defined in
14 ORS 174.117, or a public agency in any of these occupations:

15 (I) A full-time paid firefighter;

16 (II) A full-time paid emergency medical services provider;

17 (III) A full-time paid police officer;

18 (IV) A full-time paid corrections officer or youth correction officer;

19 (V) A full-time paid parole and probation officer; or

20 (VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator;

21 and

22 (ii) Remains employed in an occupation listed in sub-subparagraph (i) of
23 this subparagraph or separated from employment in the occupation not more
24 than seven years previously.

25 (C) “DSM-5” means the fifth edition of the Diagnostic and Statistical
26 Manual of Mental Disorders published by the American Psychiatric Associ-
27 ation.

28 (D) “Post-traumatic stress disorder” has the meaning given that term in
29 the DSM-5.

30 (E) “Psychiatrist” means a psychiatrist whom the Oregon Medical Board
31 has licensed and certified as eligible to diagnose the conditions described in

1 this subsection.

2 (F) "Psychologist" means a licensed psychologist, as defined in ORS
3 675.010, whom the Oregon Board of Psychology has certified as eligible to
4 diagnose the conditions described in this subsection.

5 (b) Notwithstanding subsections (2) and (3) of this section, if a covered
6 employee establishes through a preponderance of persuasive medical evidence
7 from a psychiatrist or psychologist that the covered employee has more
8 likely than not satisfied the diagnostic criteria in the DSM-5 for post-
9 traumatic stress disorder or acute stress disorder, any resulting death, disa-
10 bility or impairment of health of the covered employee shall be presumed to
11 be compensable as an occupational disease. An insurer or self-insured em-
12 ployer may rebut the presumption only by establishing through clear and
13 convincing medical evidence that duties as a covered employee were not of
14 real importance or great consequence in causing the diagnosed condition.

15 (c) An insurer's or self-insured employer's acceptance of a claim of post-
16 traumatic stress disorder or acute stress disorder under this subsection,
17 whether the acceptance was voluntary or was a result of a judgment or or-
18 der, does not preclude the insurer or the self-insured employer from later
19 denying the current compensability of the claim if exposure as a covered
20 employee to trauma that meets the diagnostic criteria set forth as Criterion
21 A in the DSM-5 for post-traumatic stress disorder or acute stress disorder
22 ceases being of real importance or great consequence in causing the disabil-
23 ity, impairment of health or a need for treatment.

24 (d) An insurer or self-insured employer may deny a claim under paragraph
25 (c) of this subsection only on the basis of clear and convincing medical evi-
26 dence.

27 (e) Notwithstanding ORS 656.027 (6), a city that provides a disability or
28 retirement system for firefighters and police officers by ordinance or charter
29 that is not subject to this chapter, when accepting and processing claims for
30 death, disability or impairment of health from firefighters and police officers
31 covered by the disability or retirement system, shall apply:

1 (A) The provisions of this subsection; and

2 (B) For claims filed under this subsection, the time limitations for filing
3 claims that are set forth in ORS 656.807 (1) and (2).

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