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971-286-0308

LC 96

Brief summary

Expands occupational disease presumption for covered nonvolunteer firefighters to include additional types of cancers.

Analysis

What the law currently does

For a worker to have a successful workers' compensation claim, the injury or disease must be work related. For certain types of conditions, the law has different requirements for the worker to prove the claim. The law also contains a "presumption" for specific occupational diseases for firefighters and other public safety personnel. A presumption does not mean a claim is automatically accepted. Instead, a presumption shifts the burden from the worker to prove the claim is work related to requiring the self-insured employer or insurer to show the condition is not work related.

The law currently establishes a presumption for a nonvolunteer firefighter employed by a political division or subdivision who has completed five or more years of employment as a nonvolunteer firefighter:

- Who is diagnosed with brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer, multiple myeloma, non-Hodgkin's lymphoma, cancer of the throat or mouth, rectal cancer, breast cancer, or leukemia;
- Is first diagnosed by a physician after July 1, 2009; and
- The cancer results from the nonvolunteer firefighter's employment.

The presumption is rebuttable by showing clear and convincing medical evidence that the condition was not caused or contributed to in material part by the firefighter's employment. The presumption does not apply to volunteer firefighters or to claims filed more than 84 months after the termination of the nonvolunteer firefighter's employment.

What will change if the bill is enacted

The bill expands the specific types of cancers currently outlined in the law to include bladder cancer and gynecologic cancer of the uterus, fallopian tubes, ovaries, cervix, vagina, or vulva.

The other requirements under the current law for the cancer presumption remain the same (e.g., duration of employment, application only to nonvolunteer firefighters). The effective date of the changes is January 1, 2023.

Likely impacts, results, or consequences if the bill is enacted

If the bill is enacted, it is possible that more cancer claims for nonvolunteer firefighters would be filed and possibly accepted since the bill expands the types of cancer eligible for the presumption.

Between 2010 and 2020, there have been 36 accepted disabling cancer claims accepted for firefighters. There were also 11 denied disabling claims and 12 denied nondisabling claims. The department does not receive reports for accepted nondisabling claims. It is unknown how many additional claims for cancer might be filed under this concept.

Questions/relevant information for the bill sponsor or primary proponent

The proposed changes will only apply to claims with dates of injury on or after January 1, 2023. For occupational diseases, the date of injury is often tied to the date of first medical treatment, or date of disability from the disease. Additionally, workers generally have 90 days to file a claim, so there could be a gap between the date of injury and when a claim is actually filed. Previous legislation related to occupational disease presumptions applied the law changes to the date of claim filing and not date of injury.

Legislative history

Has this bill been introduced in a prior session?

No Yes Years Bill numbers

Does this bill amend current state or federal law or programs?

No Yes Specify ORS 656.802.

Is this bill related to a legal decision?

No Yes Case citation, AG opinion, date, etc.

Should another DCBS division review this measure?

No Yes Divisions

Other impacts

Does this bill have a fiscal impact to DCBS?

No Yes Unknown Explain

If more claims are filed, the Workers' Compensation Division could see some workload impact since overall claim volume affects medical disputes, sanctions, reconsiderations of a Notice of Closure, reimbursement from the Workers' Benefit Fund for return to work programs and retroactive benefit adjustments, and vocational assistance disputes. Based on the reported claim data since the firefighter cancer presumption was enacted in 2010, it is expected the claim volume will be small and that existing staff can handle any associated additional workload.

Does this bill have an economic impact to stakeholders?

No Yes Unknown Explain

The bill could result in an increased number of workers' compensation claims. The cost would be reflected in the workers' compensation insurance rates paid by employers of nonvolunteer firefighters.

Sponsors

Rep. Grayber

Possible interested stakeholders

Firefighters, insurers, self-insured employers, employers, labor organizations for impacted groups, attorneys

Public policy topics

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| <input type="checkbox"/> Agency operations | <input type="checkbox"/> Other lines of insurance |
| <input type="checkbox"/> Building codes | <input type="checkbox"/> Prescription drugs |
| <input type="checkbox"/> Financial institutions and lending | <input type="checkbox"/> Property and casualty insurance |
| <input type="checkbox"/> Health insurance | <input type="checkbox"/> Public records/public meetings law |
| <input type="checkbox"/> Involvement with other agencies | <input type="checkbox"/> Rulemaking |
| <input type="checkbox"/> Licensure | <input type="checkbox"/> Securities |
| <input type="checkbox"/> Manufactured structures | <input type="checkbox"/> Task force/reports |
| <input checked="" type="checkbox"/> MLAC legislative review | <input type="checkbox"/> Worker safety |
| <input type="checkbox"/> New program | <input checked="" type="checkbox"/> Workers' compensation system |
| <input type="checkbox"/> Nondepository programs | <input type="checkbox"/> Other |