

House Bill 2418

LC 2820

2019 Regular Session

12/14/18 (TSB/ps)

D R A F T

SUMMARY

Specifies certain presumptions as to cause of death, disability or impairment of health of fire service professional, public safety personnel or employee of public or private safety agency with duties related to firefighting, police, ambulance or emergency medical services in claim for benefits related to occupational disease under workers' compensation law.

A BILL FOR AN ACT

1
2 Relating to occupational diseases for purposes of workers' compensation for
3 certain workers; creating new provisions; and amending ORS 656.802.

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

5 **SECTION 1.** ORS 656.802 is amended to read:

6 656.802. (1)(a) As used in this chapter, "occupational disease" means any
7 disease or infection arising out of and in the course of employment caused
8 by substances or activities to which an employee is not ordinarily subjected
9 or exposed other than during a period of regular actual employment therein,
10 and which requires medical services or results in disability or death, in-
11 cluding:

12 (A) Any disease or infection caused by ingestion of, absorption of,
13 inhalation of or contact with dust, fumes, vapors, gases, radiation or other
14 substances.

15 (B) Any mental disorder, whether sudden or gradual in onset, which re-
16 quires medical services or results in physical or mental disability or death.

17 (C) Any series of traumatic events or occurrences which requires medical
18 services or results in physical disability or death.

19 (b) As used in this chapter, "mental disorder" includes any physical dis-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 order caused or worsened by mental stress.

2 (2)(a) The worker must prove that employment conditions were the major
3 contributing cause of the disease.

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

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

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

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

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

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

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

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

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

29 (4) Death, disability or impairment of health of firefighters of any poli-
30 tical division who have completed five or more years of employment as fire-
31 fighters, caused by any disease of the lungs or respiratory tract, hypertension

1 or cardiovascular-renal disease, and resulting from their employment as
2 firefighters is an “occupational disease.” Any condition or impairment of
3 health arising under this subsection shall be presumed to result from a
4 firefighter’s employment. However, any such firefighter must have taken a
5 physical examination upon becoming a firefighter, or subsequently thereto,
6 which failed to reveal any evidence of such condition or impairment of
7 health which preexisted employment. Denial of a claim for any condition
8 or impairment of health arising under this subsection must be on the basis
9 of clear and convincing medical evidence that the cause of the condition or
10 impairment is unrelated to the firefighter’s employment.

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

15 (A) Is caused by brain cancer, colon cancer, stomach cancer, testicular
16 cancer, prostate cancer, multiple myeloma, non-Hodgkin’s lymphoma, cancer
17 of the throat or mouth, rectal cancer, breast cancer or leukemia;

18 (B) Results from the firefighter’s employment as a nonvolunteer fire-
19 fighter; and

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

21 (b) Any condition or impairment of health arising under this subsection
22 is presumed to result from the firefighter’s employment. Denial of a claim for
23 any condition or impairment of health arising under this subsection must be
24 on the basis of clear and convincing medical evidence that the condition or
25 impairment was not caused or contributed to in material part by the
26 firefighter’s employment.

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

31 (d) The presumption established under paragraph (b) of this subsection

1 does not apply to prostate cancer if the cancer is first diagnosed by a phy-
2 sician after the firefighter has reached the age of 55. However, nothing in
3 this paragraph affects the right of a firefighter to establish the
4 compensability of prostate cancer without benefit of the presumption.

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

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

12 (g) Nothing in this subsection affects the provisions of subsection (4) of
13 this section.

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

23 (6) Notwithstanding ORS 656.027 (6), any city providing a disability and
24 retirement system by ordinance or charter for firefighters and police officers
25 not subject to this chapter shall apply the presumptions established under
26 subsection (5) of this section when processing claims for firefighters covered
27 by the system.

28 **(7)(a) As used in this subsection:**

29 **(A) "Fire service professional" has the meaning given that term in**
30 **ORS 181A.355.**

31 **(B) "Public or private safety agency" has the meaning given that**

1 **term in ORS 181A.355.**

2 **(C) “Public safety personnel” has the meaning given that term in**
3 **ORS 181A.355.**

4 **(b) Notwithstanding subsections (2) and (3) of this section, death,**
5 **disability or impairment of health of a fire service professional, of**
6 **public safety personnel or of an employee of a public or private safety**
7 **agency with job duties related to firefighting, police, ambulance or**
8 **emergency medical services, is a compensable occupational disease if:**

9 **(A) The death, disability or impairment of health is caused by a**
10 **mental or emotional trauma or a stress-related disorder that is gen-**
11 **erally recognized in the medical or psychological community;**

12 **(B) The employment conditions that produce the mental or emo-**
13 **tional trauma or stress-related disorder exist in a real and objective**
14 **sense and arise out of performing duties as a fire service professional,**
15 **as public safety personnel or as an employee of a public or private**
16 **safety agency with duties related to firefighting, police, ambulance or**
17 **emergency medical services; and**

18 **(C) The employment conditions that produce the mental or emo-**
19 **tional trauma or stress-related disorder are not conditions generally**
20 **inherent in every working situation, are not reasonable disciplinary,**
21 **corrective or job performance evaluation actions by the employer and**
22 **are not employment decisions, including a decision to cease employ-**
23 **ment, attendant upon ordinary business or financial cycles.**

24 **(c) For the purposes of this subsection:**

25 **(A) Death, disability or impairment of health shall be presumed to**
26 **result from performing duties as a fire service professional, as public**
27 **safety personnel or as an employee of a public or private safety agency**
28 **with duties related to firefighting, police, ambulance or emergency**
29 **medical services;**

30 **(B) A denial of a claim for compensation for death, disability or**
31 **impairment of health must be on the basis of clear and convincing**

1 **medical evidence that the cause of the death, disability or impairment**
2 **of health is unrelated to performing duties as a fire service profes-**
3 **sional, as public safety personnel or as an employee of a public or**
4 **private safety agency with duties related to firefighting, police, am-**
5 **bulance or emergency medical services; and**

6 **(C) The presumption described in subparagraph (A) of this para-**
7 **graph may be rebutted only by clear and convincing medical evidence**
8 **that the cause of the death, disability or impairment of health is un-**
9 **related to performing duties as a fire service professional, as public**
10 **safety personnel or as an employee of a public or private safety agency**
11 **with duties related to firefighting, police, ambulance or emergency**
12 **medical services.**

13 **(d) Notwithstanding ORS 656.027 (6), a city that provides a disability**
14 **or retirement system for firefighters and police officers by ordinance**
15 **or charter that is not subject to this chapter, when accepting and**
16 **processing claims for death, disability or impairment of health from**
17 **firefighters and police officers covered by the disability or retirement**
18 **system, shall apply:**

19 **(A) The presumptions set forth in this subsection; and**

20 **(B) The time limitations for filing claims that are set forth in ORS**
21 **656.807.**

22 **SECTION 2. The amendments to ORS 656.802 by section 1 of this**
23 **2019 Act apply to all claims for benefits that occur or are pending on**
24 **or after the effective date of this 2019 Act.**

25