



ANALYSIS OF OREGON LEGISLATIVE CONCEPT 2820

As Pre-Filed on December 14, 2018

Oregon Legislative Concept (LC) 2820, if enacted in its current form, may result in an indeterminate increase in system costs for first responder (firefighter, police, ambulance, and emergency medical services) job classification codes in Oregon. Much of the cost impact for first responder¹ class codes would be borne by governmental entities who are the typical employers of the affected employees. The impact on overall workers compensation (WC) costs is expected to be minimal² since data reported to NCCI shows that first responder classifications represent less than 2% of losses³ in Oregon, although the expected cost impact on individual first responder class codes could be greater.

If enacted, any system cost impact would be realized through future loss experience and reflected in subsequent NCCI loss cost filings in the state.

Summary of LC 2820

Currently, under Oregon Revised Statutes (ORS) 656.802, an occupational disease is compensable for all job classifications if the injured worker proves that the employment conditions were the major contributing cause of the disease and establishes the existence of the disease with objective medical evidence.

The existing definition of "occupational disease" includes many physical diseases as well as any mental disorder which requires medical services or results in physical or mental disability or death, and traumatic events which result in physical disability or death. There must be clear and convincing evidence that the mental disorder arose out of and in the course of employment.

LC 2820 proposes to grant a rebuttable presumption to apply to occupational disease for first responders in the case of mental or emotional trauma or a stress-related disorder, and adds language further defining mental injuries in these situations.

Under LC 2820, the injured worker would be eligible for this presumption of compensability without needing to prove by clear and convincing evidence that the occupational disease (that is, the mental or emotional trauma or stress-related disorder) arose out of employment, and that employment conditions were the major contributing cause of the disease.

¹ First responders include fire service professionals, public safety personnel, and employees of public or private safety agencies with job duties related to firefighting, police, ambulance, or medical emergency services.

² Minimal in this context is defined as an impact on overall system costs of less than +/- 0.2%.

³ NCCI Workers Compensation Statistical Plan data for Oregon policies becoming effective between 1/1/2011 and 12/31/2015. This figure may understate the total population share of Oregon first responders, since the organizations employing them are often self-insured and therefore are not required to report data to NCCI.



ANALYSIS OF OREGON LEGISLATIVE CONCEPT 2820 *As Pre-Filed on December 14, 2018*

More specifically, death, disability or impairment of health would be presumed to result from performing duties as a first responder, and it would be the denial of such a work connection that must be proved on the basis of clear and convincing medical evidence.

Specifically, an occupational disease would be compensable for first responders if:

- The cause of the injury is a mental or emotional trauma or a stress-related disorder generally recognized within the medical or psychological community.
- “Employment conditions that produce the mental or emotional trauma or stress-related disorder exist in a real and objective sense” and arise out of employment duties.
- Employment conditions that produce the mental or emotional trauma or stress-related disorder are not “generally inherent in every working situation” and are not related to disciplinary or job performance issues.

Actuarial Analysis of LC 2820

Under LC 2820, benefit costs would be expected to increase since a rebuttable presumption would be created to include all first responders for compensable occupational diseases resulting from mental or emotional trauma or stress-related disorder, which may be relatively more common in these jobs and not presumptively compensable currently. Hence, the likelihood of first responders receiving WC benefits for mental injuries/illnesses would be expected to increase.

Post-traumatic stress disorder (PTSD) is one type of mental or emotional trauma or stress-related disorder that could be impacted if LC 2820 were enacted. Although events leading to PTSD cannot be predicted with certainty, the incidence of PTSD is estimated to be significantly higher for first responders compared to the general population. According to the U.S. Department of Veterans Affairs, about 55% of the general population will experience at least one trauma in their lives and, as a result, about 7-8% of the population will have PTSD at some point in their lives.⁴ In comparison, the National Center for Biotechnical Information (NCBI) concluded that the prevalence of PTSD among Emergency Medical Technicians is greater than 20%,⁵ and various sources have reported that 7-37% of firefighters have PTSD.⁶

NCCI is unable to explicitly quantify the expected increase in the number of compensable occupational disease claims if LC 2820 were enacted. However, due to the high prevalence of PTSD among first responders, NCCI estimates that the increase in compensable PTSD-related claims could be substantial for these occupational classifications. Other types of mental or emotional trauma or stress-related disorder claims could increase as well.

⁴ U.S. Department of Veterans Affairs. (No date). How Common is PTSD? Retrieved from <http://www.ptsd.va.gov/public/PTSD-overview/basics/how-common-is-ptsd.asp>.

⁵ Donnelly, E., and Siebert, D. (2009, Sep-Oct). Occupational risk factors in the emergency medical services. Retrieved from <http://www.ncbi.nlm.nih.gov/pubmed/20066645>.

⁶ Tull, Matthew. (2013, January 29). Rates of PTSD in Firefighters. Retrieved from <http://ptsd.about.com/od/prevalence/a/Firefighters.htm>.



ANALYSIS OF OREGON LEGISLATIVE CONCEPT 2820 As Pre-Filed on December 14, 2018

NCCI estimates that, if enacted, LC 2820 may result in an indeterminate increase in WC system costs in Oregon. Much of the cost impact to first responders would be felt by governmental entities who are typically the employers of such professions. However, the estimated impact on overall WC system costs would be expected to be minimal, since data reported to NCCI shows that first responders represent less than 2% of losses in Oregon.

Other Considerations

If enacted, LC 2820 could potentially result in increased litigation related to the confirmation of a mental or emotional trauma or stress-related disorder, the determination of whether the occupational disease arose out of an activity performed within the course of employment, and interpretations related to the specified qualifying events (e.g., "...generally inherent in every working situation"). Any costs associated with increased litigation would be expected to exert upward pressure on overall WC system costs.

Section 2 of LC 2820 states that the proposed change would "apply to all claims for benefits that occur *or are pending* on or after the effective date of this 2019 Act" (emphasis added). Hence, the proposed changes, if enacted, would extend to some accidents/events occurring prior to the proposed effective date, and there may be retroactive cost impacts arising from the provisions of LC 2820. If enacted, such a retroactive application could result in an unfunded liability, as any potential cost impacts from pending claims due to LC 2820 would not have been contemplated in the approved NCCI loss costs applicable to policies written prior to enactment of LC 2820.

THIS DOCUMENT AND ANY ANALYSIS, ASSUMPTIONS, AND PROJECTIONS CONTAINED HEREIN PROVIDE AN ESTIMATE OF THE POTENTIAL PROSPECTIVE SYSTEM COST IMPACT(S) OF PROPOSED/ENACTED BENEFIT CHANGE(S) AND IS PROVIDED SOLELY AS A REFERENCE TOOL TO BE USED FOR INFORMATIONAL PURPOSES ONLY. THIS DOCUMENT SHALL NOT BE CONSTRUED OR INTERPRETED AS PERTAINING TO THE NECESSITY FOR OR A REQUEST FOR A LOSS COST/RATE INCREASE OR DECREASE, THE DETERMINATION OF LOSS COSTS/RATES, OR LOSS COSTS/RATES TO BE REQUESTED. THE ANALYSIS CONTAINED HEREIN EVALUATES THE DESCRIBED CHANGES IN ISOLATION UNLESS OTHERWISE INDICATED; ANY OTHER CHANGES NOT INCLUDED IN THIS ANALYSIS THAT ARE ULTIMATELY ENACTED MAY RESULT IN A DIFFERENT ESTIMATED IMPACT. I, BRUCE SPIDELL, FCAS, MAAA, AM AN ASSOCIATE ACTUARY FOR THE NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC. AND THE ACTUARY RESPONSIBLE FOR THE PREPARATION OF THIS DOCUMENT. THIS DOCUMENT IS PROVIDED "AS IS" ON THE DATE SET FORTH HEREIN AND INCLUDES INFORMATION AND EVENTS AVAILABLE AT THE TIME OF PUBLICATION ONLY. NCCI'S FINAL ESTIMATED IMPACT MAY DIFFER FROM WHAT IS PROVIDED IN THIS ANALYSIS IF ADDITIONAL INFORMATION BECOMES AVAILABLE OR IF DATA NECESSARY TO ANALYZE PROVISIONS THAT WERE NOT EXPLICITLY QUANTIFIED PREVIOUSLY BECOMES AVAILABLE.