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HB 4062

Note: This bill analysis was revised on February 4, 2020. While processing a data request, we identified a discrepancy in our previously reported data. We have revised the analysis on page 3 to reflect the following:

The department has data about heart/lung claims for workers who are currently covered under ORS chapter 656. In reviewing the claims based on the year the Form 801 was received, we identified the following information: In the years from 2001 through 2010, a total of ten disabling cardiovascular or respiratory claims were reported and ultimately accepted for firefighters and firefighting supervisors. From 2011 through 2018, there were a total of 22 disabling cardiovascular or respiratory claims reported and ultimately accepted for firefighters and firefighting supervisors. This data does not include firefighters or firefighting supervisors with the City of Portland.

Brief summary

Broadens the applicability of the heart/lung presumption to cities that offer an alternative program for police and fire employees (e.g. the City of Portland).

Analysis

What the law currently does

Workers' compensation claims are either an injury or occupational disease. An injury arises from an identifiable event or has an onset traceable to a discrete period of time. An occupational disease generally occurs more gradually, but, in specified circumstances, may include sudden conditions.

If a claim is categorized as an occupational disease, the worker usually has to show that work was the major cause of the condition. But, the law contains a "presumption" for certain types of claims. A presumption does not mean a claim is automatically accepted. Instead, it shifts the burden of proof. Without the presumption, *the worker* must establish that work was the major cause of the condition. With the presumption, *the employer/insurer* has a specified burden of proof to establish the condition was *not* caused by work. This specified burden varies depending on the presumption being applied.

The presumptions in the current law involve firefighters with specified heart/lung conditions, cancers, and mental disorders. The heart/lung presumption was the first of the three presumptions, and it went into effect in 1961. In addition to covering firefighters, the presumption for specified mental disorders also applies to other types of first responders, including police officers, as well as certain correction officers and parole/probation officers.

Each presumption has specified thresholds that must be met for it to apply. The following outlines the details for the heart/lung presumption:

Requirements for the heart/lung presumption to apply:

- Firefighter of a political division
- Completion of five or more years of employment as a firefighter
- Underwent a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of the heart/lung condition or impairment of health which preexisted employment.

What is an “occupational disease” under the heart/lung presumption: Death, disability or impairment of health caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease.

What is the burden of proof for a denial of a heart/lung claim covered under the presumption:

The employer/insurer has to demonstrate with clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter’s employment.

Each of the presumptions apply to workers who are subject to ORS chapter 656. The cancer presumption and mental disorder presumption also apply to a city that provides a disability or retirement system for firefighters and police officers by ordinance or charter. Currently, this is only the City of Portland.

What will change if the bill is enacted

The heart/lung presumption will apply to a city that provides a disability or retirement system for firefighters and police officers by ordinance or charter. Currently, this is only the City of Portland.

The bill also adopts the time limitations under ORS 656.807(1) and (2) for occupational disease claims filed with these cities under this presumption. That statute requires a claim to be filed by whichever is the later of the following dates: (1) one year from the date the worker first discovered, or in the exercise of reasonable care should have discovered, the occupational disease; or (2) one year from the date the claimant becomes disabled, or is informed by a physician that the claimant is suffering from an occupational disease. If the occupational disease results in death, a claim may be filed within one year from the date the worker’s beneficiary first discovered, or in the exercise of reasonable care should have discovered, that the cause of the worker’s death was due to an occupational disease.

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

The number of compensable heart/lung claims will likely increase for the City of Portland. The department does not get claim data from the City of Portland Fire and Police Disability and Retirement Fund, so we cannot quantify the impact on their claims.

The department has data about heart/lung claims for workers who are currently covered under ORS chapter 656. In reviewing the claims based on the year the Form 801 was received, we identified the following information: In the years from 2001 through 2010, a total of ten disabling cardiovascular or respiratory claims were reported and ultimately accepted for firefighters and firefighting supervisors. From 2011 through 2018, there were a total of 22 disabling cardiovascular or respiratory claims reported and ultimately accepted for firefighters and firefighting supervisors. This data does not include firefighters or firefighting supervisors with the City of Portland.

Questions/relevant information for the bill sponsor or primary proponent

1. The proposed change references the processing of claims for police officers. Currently, the heart/lung presumption only applies to certain firefighters. The proposed statutory revision maintains the current heart and lung presumption, which refers to death, disability or impairment of health *of firefighters*. But, the change in proposed (4)(b) requires certain cities to apply the provisions of proposed (4)(a) when accepting and processing claims for death, disability or impairment of health from firefighters *and police officers* who are covered by the specified disability or retirement system.

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 ORS chapter 656

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 DCBS does not handle disputes about firefighter claims with cities who provide a disability or retirement system for firefighters by ordinance or charter.

Does this bill have an economic impact to stakeholders?

No Yes Unknown This bill would likely result in an increased number of compensable workers' compensation claims for any city that provides a disability or retirement system for firefighters by ordinance or charter (e.g., the City of Portland).

Sponsors

No known sponsors at this time

Possible interested stakeholders

Firefighters, insurers, 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 |