
OLR Bill Analysis

sSB 313

AN ACT CONCERNING ADOPTION OF THE RECOMMENDATIONS OF THE TASK FORCE TO STUDY CANCER RELIEF BENEFITS FOR FIREFIGHTERS.

SUMMARY

This bill (1) establishes a rebuttable presumption that a paid or volunteer firefighter diagnosed with cancer got the disease in the course of employment due to exposures specific to duties performed as a firefighter and (2) makes the illness covered under workers' compensation law. To qualify for workers' compensation, the cancer must result in death or temporary or permanent total or partial disability and be a condition of cancer affecting the brain or skin, or any of the following systems: skeletal, digestive, endocrine, respiratory, lymphatic, reproductive, hematological, or urinary.

The bill sets six conditions that a firefighter must meet to qualify for the presumption including, for example, time served as a firefighter, annual checkups, and whether the firefighter regularly used proper protective equipment. It specifically states that the presumption can only be rebutted by clear and convincing evidence that the firefighter did not meet one of the qualifying conditions.

The bill also:

1. requires the Labor Department's (DOL) Division of Occupational Safety and Health (CONN-OSHA) to adopt the International Association of Fire Chiefs' Best Practices for Preventing Firefighter Cancer (§ 1);
2. requires the Workers' Compensation Commission (WCC) to (a) maintain a record of all firefighters' workers' compensation claims made due to a cancer diagnosis and (b) report a summary of the records to the Labor Committee each year by January 1 (§

- 3);
3. repeals language that bars a firefighter from receiving benefits from the existing firefighters cancer relief program or any other wage replacement program while also receiving workers' compensation benefits for work-related cancer (§ 4);
 4. appropriates \$1.2 million to the firefighters cancer relief account established in law to provide funds for the firefighters cancer relief program (§ 10);
 5. replaces the term "employee" with "claimant" in the law that requires employers to continue employee insurance coverage while he or she is eligible for, or receiving workers' compensation benefits, and in doing so expands the law to also apply to the employee's surviving spouse or other dependents (§ 5);
 6. requires the comptroller to conduct a feasibility study on providing pension benefits to firefighters in circumstances when the required pension service years are not met due to early retirement resulting from a qualifying cancer diagnosis (§ 6); and
 7. requires a volunteer fire department or volunteer ambulance company to comply with the state's Occupational Safety and Health Act (CONN-OSHA) as an employer, unless it can show that it is under federal OSHA jurisdiction (§§ 7-9).

EFFECTIVE DATE: Upon passage, except July 1, 2022, for the provisions (1) creating the rebuttable presumption and (2) requiring CONN-OSHA to adopt the international best practices.

§ 2 — WORKERS' COMPENSATION REBUTTABLE PRESUMPTION
Presumption Qualification Requirements (§ 2(b))

If a firefighter meets the bill's required qualifications, there is a presumption that his or her cancer diagnosis is work related.

Service. To qualify, the firefighter must have worked at least five years on or after February 1, 2017, as:

1. an interior structural firefighter at a paid municipal, state, or volunteer fire department; or
2. a local fire marshal, deputy fire marshal, fire investigator, fire inspector, or another class of inspector or investigator whose position meets minimum qualifications under state law set by the State Fire Marshal and the Codes and Standards Committee at the time the cancer is discovered or should have been discovered.

Under the bill, an “interior structural firefighter” is a person who performs fire suppression, rescue, or both, inside buildings or enclosed structures that are involved in a fire beyond the incipient state as defined in federal regulations (i.e., a fire at the beginning stages that can be extinguished by portable fire extinguishers or small hose systems without the need for protective clothing or breathing safety apparatus (29 C.F.R. 1910.155)).

Grounds for Rebutting the Presumption. The bill’s presumption can only be rebutted by clear and convincing evidence of any of the following:

1. the firefighter worked less than five years of service on or after February 1, 2017, as service is defined above;
2. the firefighter had a physical examination upon entry into service, or subsequent to entry, that revealed evidence of the claimed cancer or a propensity for such cancer;
3. the firefighter failed to have annual physical examinations subsequent to entry into service;
4. the firefighter used cigarettes or any other tobacco products, as defined in state law, within 15 years of the diagnosis of the claimed cancer;
5. the firefighter has not used respiratory protection and other personal protective equipment as described in the federal OSHA standards for five consecutive years; or
6. the claimed cancer is not one that is known to result from

exposure to heat, radiation, or a known carcinogen as determined by the International Agency for Research on Cancer or the National Toxicology Program of the United States Department of Health and Human Services.

Five-Year Window After Service as a Firefighter (§ 2(c))

The bill allows a firefighter who is no longer actively serving, but who would otherwise fall within the provisions of the bill's presumption, to apply for workers compensation benefits no later than five years after the date the person last served as a firefighter.

Ongoing Testing (§ 2(d))

A firefighter, or other individual, who is eligible for benefits under the bill must, as a condition of receiving the benefits, submit to annual physical examinations, including blood testing, during the firefighter's or other individual's active service and for five years after the date the person last served.

Under the bill, workers' compensation will not cover the cost of any physical examination required under this provision.

Separate Insurance Policy to Address Cancer Illnesses (§ 2(e))

The bill also permits a fire department to purchase a separate private insurance policy to cover firefighters' illnesses or injuries arising out of, and in the course of, employment as an alternative to workers' compensation coverage for work related to cancer. The policy must provide benefits that are comparable to, or better than, workers' compensation. (The bill does not specify how an employer would determine whether the policy's benefits are comparable to or better than workers' compensation.)

§ 1 – CONN-OSHA PRACTICES

In addition to requiring CONN-OSHA to adopt the International Association of Fire Chiefs' Best Practices for Preventing Firefighter Cancer, the bill also requires the same agency to adopt a practice requiring at least two sets of turnout gear to be provided to firefighters. The bill states that this would ensure clean gear is worn while any

contaminated gear is properly cleaned.

§§ 4 & 10 – FIREFIGHTERS CANCER RELIEF PROGRAM

Under current law, the firefighters cancer relief program is authorized to provide wage replacement benefits to eligible paid and volunteer firefighters diagnosed with cancer. The law established a cancer relief subcommittee of the Connecticut State Firefighters Association to award the program benefits.

The bill repeals language that bars a firefighter from receiving benefits from the existing firefighters cancer relief program or any other wage replacement program while also receiving workers' compensation benefits for a work-related cancer diagnosis.

The bill also appropriates, from the General Fund, \$1.2 million for FY 23 to the existing firefighters cancer relief account set up to provide funds for the firefighters cancer relief program. The funds must be used for retroactive pay for the years the \$400,000 annual appropriation was deferred.

§ 5 – HEALTH INSURANCE AND WORKERS' COMPENSATION CLAIMANTS

Current worker's compensation law requires an employer that provides accident, health, or life insurance to its employees to continue to provide the insurance while the employee is eligible for, or receiving, workers' compensation benefits.

The bill replaces the term "employee" with "claimant" and in doing so expands the law to also apply to the surviving spouse or other dependents of the employee.

Under a separate workers' compensation law, a surviving spouse or other dependent is eligible for burial benefits and weekly compensation calculated as a percentage of the deceased employee's wages (CGS § 31-306).

§ 6 – PENSION STUDY REGARDING EARLY RETIREMENT DUE TO CANCER

The bill requires the comptroller to study the feasibility of providing pension benefits in circumstances when a firefighter's years of service do not meet the full pension requirement because of an early retirement due to a qualifying cancer diagnosis. The study must examine the feasibility of implementing a prorated benefit for early retirement situations.

The comptroller must report the findings and any recommendations to the Labor Committee (The bill does not provide a deadline for the study.).

§§ 7-9 – VOLUNTEER FIRE COMPANIES AND CONN-OSHA

The bill requires a volunteer fire department or volunteer ambulance company to comply with Conn-OSHA as an employer unless it can show that it is under federal OSHA jurisdiction. By law, Conn-OSHA governs workplace safety for the state and its political subdivisions as employers; so, certain non-governmental volunteer fire and ambulance companies are not considered to be under its jurisdiction (see BACKGROUND). They are, generally, not covered by federal OSHA unless they are privately chartered and have paid employees.

The bill also limits the penalty that may be imposed on volunteer fire departments and ambulance companies for non-serious violations of certain Conn-OSHA laws and regulations. Current law allows the Occupational Safety and Health Review Commission to impose up to a \$1,000 civil penalty on an employer cited for a non-serious violation. The bill instead requires it to issue a written warning for the first non-serious violation by a volunteer fire department or volunteer ambulance company.

By law, a serious violation is one that (1) could result in a substantial probability of death or serious physical harm and (2) the employer should know about by exercising reasonable diligence (CGS § 31-382(b) & (l)).

BACKGROUND

Related Case

In *Mayfield v. Goshen Volunteer Fire Company* (301 Conn. 739 (2011)), the Connecticut Supreme Court ruled that a privately chartered volunteer fire company is not a political subdivision of the state (and not subject to Conn-OSHA jurisdiction) if it is not controlled by a municipality or municipal officials.

Related Bill

HB 5247 (File 76), favorably reported by the Labor Committee on March 10, 2022, includes identical provisions to sections 7-9 of the bill.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 12 Nay 0 (03/22/2022)