



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 211 (as enacted)
Sponsor: Senator Tory Rocca
Senate Committee: Judiciary
House Committee: Insurance

PUBLIC ACT 515 of 2014

Date Completed: 4-23-15

CONTENT

The bill amended Chapter 4 (Occupational Diseases and Disablements) of the Worker's Disability Compensation Act to do the following:

- Include an injury to a member of a fully paid public fire authority employed and compensated on a full-time basis in a provision that includes respiratory and heart diseases, or illnesses resulting from those diseases, in the definition of "personal injury" for certain police officers and firefighters.
- Create the First Responder Presumed Coverage Fund and require certain firefighters to suspend a workers' compensation claim and instead claim like benefits from the Fund for respiratory tract, bladder, skin, brain, kidney, blood, thyroid, testicular, prostate, or lymphatic cancer.
- Specify that those types of cancer are presumed to arise out of and in the course of employment with respect to a claim against the Fund and in the absence of nonwork-related causation or specific incidents that establish a cause independent of the employment.
- Allow the presumption to be rebutted by evidence of a person's substantial and consistent use of cigarettes or other tobacco products within the 10 years preceding the injury.
- Specify that the Department of Licensing and Regulatory Affairs (LARA) may not implement the Fund until the Legislature has appropriated money to it.
- Require the Director of the Workers' Compensation Agency (WCA) to develop and implement a process to notify the Legislature that money in the Fund may be insufficient to cover future claims.
- Require the WCA Director to develop the application, approval, and compliance process to operate and manage the Fund.
- Require the WCA Director to submit annual reports to the State Budget Director, the Senate and House Appropriations Committees, and the Committee chairs.
- Require a firefighter who makes a claim against the Fund for particular types of cancer to apply for any pension benefits to which he or she may be entitled.
- Specify that a firefighter with any of the applicable types of cancer, or a law enforcement officer or firefighter with respiratory or heart disease, who is eligible for pension benefits, is not prohibited from receiving benefits under the Act for medical expenses not provided by the pension program.

The bill took effect on January 14, 2015.

Personal Injury: Respiratory & Heart Diseases

The Act establishes benefits for personal injury sustained by an employee in the course of his or her employment, or for death resulting from such personal injury. The definition of "personal injury" in Chapter 4 refers to a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the employer and that arises out of and in the course of employment.

The term includes respiratory and heart diseases, or illnesses resulting from respiratory and heart diseases, that develop or manifest themselves while the person is in active service and that result from the performance of his or her duties, in the case of a member of a fully paid fire or police department of a city, township, or incorporated village employed and compensated upon a full-time basis; a county sheriff and the sheriff's deputies; a member of the State Police; a conservation officer; an officer of the motor carrier enforcement division of the State Police; or a member of a fully paid fire department of an airport operated by a county public airport authority, or by a State university or college. Under the bill, the term also includes such an injury to a member of a fully paid public fire authority employed and compensated on a full-time basis. Previously, the Act referred to a fire department of an airport run by a county road commission in a county with a population of 1 million or more, rather than one operated by a county public airport authority.

Under Chapter 4, respiratory and heart diseases or illnesses resulting from respiratory and heart diseases are presumed to arise out of and in the course of employment described above, in the absence of evidence to the contrary.

Claim of Benefits from the Fund; Presumption & Rebuttal

Under the bill, under certain circumstances, a member of a fully paid fire department or public fire authority must suspend a workers' compensation claim against his or her employer and may claim like benefits from the First Responder Presumed Coverage Fund created by the bill for any respiratory tract, bladder, skin, brain, kidney, blood, thyroid, testicular, prostate, or lymphatic cancer.

That provision applies to a member of a fully paid fire department or public fire authority who is in active service of the department or authority, has been employed for at least 60 months in the active service of the department or authority at the time the cancer manifests itself, and is exposed to the hazards incidental to fire suppression, rescue, or emergency medical services in the performance of his or her work-related duties.

The suspension of the person's claim against his or her employer will be in effect only during the period the person receives like benefits from the Fund. If a redemption agreement between the Fund and the claimant is approved, the suspension of a claim against an employer will continue indefinitely. A claimant may not receive benefits covering the same period from both the Fund and the employer.

The types of cancer listed above are presumed to arise out of and in the course of employment only with respect to a claim against the Fund and in the absence of nonwork-related causation or specific incidents that establish a cause independent of the employment. Neither mere evidence that the condition was pre-existing, nor an abstract medical opinion that the employment was not the cause of the disease or condition, is sufficient to overcome the presumption for purposes of a claim against the Fund.

The presumption may be rebutted by scientific evidence that the person was a substantial and consistent user of cigarettes or other tobacco products within the 10 years immediately preceding the date of injury, and that this use was a significant factor in the cause, aggravation, or progression of the cancer.

First Responder Presumed Coverage Fund

The bill created the First Responder Presumed Coverage Fund as a separate Fund in the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund. The Treasurer must direct the investment of the Fund and credit to it interest and earnings from Fund investments.

The Director of the Workers' Compensation Agency must be the administrator of the Fund for auditing purposes. The Director may spend money from the Fund only for the purpose of paying claims authorized under the bill and costs of administration. The Department of Treasury must cause money to be paid from the Fund in amounts and at times prescribed by the Director to pay claims.

The Department of Licensing and Regulatory Affairs may not implement the Fund until the Legislature has appropriated money to it.

Money in the Fund at the close of the fiscal year must remain in the Fund and may not lapse to the General Fund. If there is insufficient money in the Fund to pay authorized claims, then claims that are approved but not paid must be paid if Fund revenue becomes available, and those claims must be paid before subsequently approved claims.

The WCA Director must develop and implement a process to notify the Legislature when he or she reasonably believes that, within 60 days, the money in the Fund will be insufficient to pay future claims. The process, at a minimum, must do all of the following:

- Identify a specific date by which the money in the Fund will become insufficient to pay claims.
- Outline a clear process indicating the order in which claims pending with the Fund will be paid.
- Outline a clear process indicating the order in which claims that were pending with the Fund when money became insufficient will be paid, if money subsequently becomes available.

The WCA Director also must develop the application, approval, and compliance process necessary to operate and manage the Fund. The Director must develop and implement the use of an application form to be used by a claimant for benefits payable by the Fund. When a claim is received, the Director must notify the employer against whom a claim is suspended or the employer's insurance carrier. The employer or carrier may gain access to all information the WCA receives respecting the claim and may request that the Agency obtain specific additional information. The Director must review and consider claims in the order in which they are received and must approve or deny a claim within 30 days after receiving it.

The Fund standards, guidelines, templates, and any other forms the Director uses to implement the Fund must be posted and maintained on the LARA website.

The Fund has the same rights under the Act as an employer or carrier.

Annual Reports

The bill requires the WCA Director to submit a report to the State Budget Director and the Senate and House Appropriations Committees by April 1 of each year. The report must include at least all of the following information for the immediately preceding calendar year:

- The total number of claims received by the First Responder Presumed Coverage Fund.
- The number of claims approved and the total dollar amount of claims paid by the Fund.

-- The costs of administering the Fund.

By March 31 of each year, the WCA must report to the chairs of the Senate and House Appropriations Committees the estimated amount of both of the following:

- The anticipated cost of benefits in the next fiscal year for claims authorized and payable by the Fund.
- The amount of any anticipated shortfall in the Fund that would prevent payment of claims for the current fiscal year.

Pension Benefits

Before filing an application for benefits, a claimant who is a firefighter or law enforcement officer covered by the definition of "personal injury" that includes respiratory or heart disease must apply for and do all things necessary to qualify for any pension benefits to which he or she may be entitled. Under the bill, this requirement also applies to a firefighter who makes a claim against the First Responder Presumed Coverage Fund for particular types of cancer.

If there is a final determination that pension benefits may not be awarded or that the claimant or his or her decedent is ineligible for any pension benefits, then the presumption of personal injury for respiratory or heart disease or the presumption that the particular types of cancer identified in the bill arose out of and in the course of employment as a firefighter applies.

Also, if a firefighter or law enforcement officer covered for respiratory or heart disease or a firefighter who makes a claim against the Fund is eligible for any pension benefits, that eligibility does not prohibit the employee or his or her dependents from receiving benefits under the Act for the medical expenses or portion of medical expenses not provided for by the pension program.

MCL 418.405

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on the State and no fiscal impact on local units of government. Under the bill, members of fully paid fire departments or public fire authorities are eligible for workers' compensation benefits for certain types of illnesses. The bill establishes a reimbursement program administered by the Workers' Compensation Agency within LARA that will reimburse carriers for any expenses incurred under the bill. Funds for the reimbursement program are subject to appropriations to the new First Responder Presumed Coverage Fund. As long as the Fund has a sufficient balance, any claims filed under the bill for those illnesses will be reimbursed by the State and will not affect the workers' compensation insurance rates paid by fire departments or public fire authorities.

The bill specifies that the presumption arising under it will apply only for claims made against the Fund, meaning that if nothing is appropriated to the Fund, then no presumption will be made. Similarly, if appropriations are made to the Fund, but all of the money is spent, future claims may not be made under the bill's presumption. Because of these conditions, the bill will have no fiscal impact on local units of government. The fiscal impact on the State is indeterminate, as the bill requires further action by the current or a future Legislature to either appropriate or not appropriate money to the Fund; by itself, the bill will have no fiscal impact on State government.

Fiscal Analyst: Josh Sefton

SAS\S1314\s211es

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.