



Municipal Excess Liability Joint Insurance Fund

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Firefighter's Cancer Presumption S-716

The MEL is committed to work with other concerned parties to pass legislation that protects the firefighters while balancing the fiscal realities of local government and taxpayers here in New Jersey.

Attached is the updated chart on the status of this legislation in each of the 50 states. The latest trend is to cover firefighters in a program *outside* of the Workers' Compensation law. This approach was recently adopted by New York, Connecticut, Colorado, Michigan, and Georgia and was supported by both firefighters and municipalities. The new legislation in Colorado is especially interesting because ten years ago the state inserted a presumption into their workers' compensation law, but found it so unsatisfactory in practice that they created a new program outside of the workers' compensation system.

1. The problem with including the presumption in workers' compensation is that it requires local tax payers to pay medical bills that would otherwise be paid by the federal government or health insurers. This *dramatically* increases the cost. Establishing a program outside of workers' compensation, such as has been done recently in New York, Connecticut, Colorado, Michigan and Georgia avoids this cost. This is the reason that for the last decade we have proposed that New Jersey also create a special fire fighters cancer program outside of the workers' compensation law.

The 24 states currently with workers' compensation cancer presumptions reduce this problem by substantially restricting coverage. In five of these states, the firefighter must be currently employed when the cancer is diagnosed. Sixteen of these states have a statute of limitation. The most common cutoff is five years from the date an individual retires from the fire service, or age 65 when the firefighter becomes eligible for Medicare. Seven of these 24 states exclude volunteers from the presumption and another seven exclude current and former smokers. If here in New Jersey the coverage is provided outside of the workers' compensation system, individual firefighters can be provided with broad coverage while still keeping the costs reasonable.

2. Almost all states limit the types of cancer covered under the presumption. Any presumption must be based on scientific evidence that establishes those cancers that firefighters develop at a higher rate than the general population. Approximately one-third of firefighters will develop cancer in their lifetimes, which is also the rate for the population as a whole. Therefore, the potential costs of any presumption legislation runs into the hundreds of millions of dollars annually unless the presumption is based on scientific evidence that establishes the specific cancers linked to occupational exposures.

The most comprehensive study to date was published by the prestigious National Institute for Occupational Safety and Health (NIOSH). This study focused on 30,000 career firefighters in three major cities who were for the most part exposed before the widespread use of air breathing apparatus. The study concluded that these firefighters had a significantly higher rate of mesothelioma and elevated rates of respiratory, digestive, and urinary cancers. Therefore, we propose that the bill authorize the Commissioner of Labor and Workforce Development to designate by regulation the types of cancers that firefighters experience at significantly higher rates than the general population.

3. S-716 as written will make it almost impossible to contest claims. Under current New Jersey law, the standard to rebut a presumption is “preponderance of the evidence”. In S-716, the standard is raised to the impossible “clear and convincing” evidence. Only one state, Oregon uses that standard. However, Oregon excludes volunteers from the presumption and requires career firefighters to report any claims within 7 years of retirement. The other states either use the more reasonable “preponderance of the evidence” currently used in New Jersey or something similar.

To summarize, the bill should establish a compensation program outside of the workers’ compensation system that covers firefighters who incur cancers. By doing this, better benefits can be provided firefighters at lower cost. The bill should authorize the Commissioner of Labor and Workforce Development to designate by regulation the types of cancers that firefighters experience at significantly higher rates than the general population. If the presumption remains in workers’ compensation, there needs to be a statute of limitations at age 65 and the standard for the presumption should be the more reasonable “preponderance of the evidence”.

We again reiterate our willingness to work with supporters to find a fair balance between the concerns of firefighters as well as local government.

Comparison of State Fire Fighter Cancer Presumption Laws

- **Alabama:** No workers' compensation cancer presumption. Eligibility for a disability pension includes a cancer presumption. The firefighter must establish exposure to a carcinogen linked to the type of cancer. The presumption can be rebutted by the "preponderance of the evidence."
- **Alaska:** 7 years minimum employment required for a workers' compensation presumption that expires 5 years after retirement from the fire service. The presumption only applies to certain types of cancer and is rebuttable by "the preponderance of the evidence". The presumption does not apply to smokers.
- **Arizona:** 5 years minimum employment required for a workers' compensation presumption that expires at age of 65. The presumption only applies to certain types of cancer and does not apply to volunteers and smokers.
- **Arkansas:** No workers' compensation cancer presumption. Firefighters who are diagnosed with cancer before age 68 may receive a special \$150,000 benefit from the Arkansas State Claims Commission.
- **California:** The presumption in workers' compensation expires 10 years after retirement. Claims may be rebutted by evidence that the type of cancer is not reasonably related to the fire fighter's exposure.
- **Colorado:** 5 years minimum employment required for a workers' compensation presumption. The presumption is limited to certain types of cancer and may be rebutted by the preponderance of the evidence. In 2016, a Colorado Supreme Court decision (Zukowski v Castle Rock) made it substantially more difficult to establish a claim under the presumption. As a result, a 2017 amendment to the statute permits departments to opt out of the workers' compensation cancer presumption by joining a special heart and cancer benefits trust.
- **Connecticut:** No workers' compensation cancer presumption. In 2016, the state established a firefighters' cancer relief fund.
- **Delaware:** No workers' compensation cancer presumption.
- **Florida:** No workers' compensation cancer presumption.
- **Georgia:** No workers' compensation cancer presumption. Under legislation adopted in 2016, Fire Departments are required purchase a special policy that provides a lump sum benefit when a firefighter is diagnosed with cancer.
- **Hawaii:** No workers' compensation cancer presumption.

- **Idaho:** No workers' compensation cancer presumption
- **Illinois:** 5 years minimum employment required for a workers' compensation presumption. The claimant must be an "active" firefighter when diagnosed. To rebut the presumption, the employer only must offer some evidence to support a finding that something other than the claimant's occupation as a fire fighter caused the condition.
- **Indiana:** Presumption in workers' compensation expires 5 years after retiring from the fire service and only applies to certain types of cancer. The presumption does not apply to volunteers and recent smokers (in the last 5 years).
- **Iowa:** No workers' compensation cancer presumption. Eligibility for a disability pension includes a cancer presumption.
- **Kansas:** No workers' compensation cancer presumption. Eligibility for a disability pension includes a cancer presumption that requires 5 years minimum employment.
- **Kentucky:** No workers' compensation cancer presumption.
- **Louisiana:** 10 years minimum employment required for a workers' compensation presumption and the presumption expires 5 years after retiring from the fire service. The presumption is limited to certain types of cancer and is rebuttable by "evidence meeting judicial standards." The presumption does not apply to volunteers.
- **Maine:** 5 years minimum employment required for a workers' compensation presumption that expires 10 years after leaving the fire service or at age 70. The presumption is limited to certain types of cancer.
- **Maryland:** 5 years minimum employment required in the department "where the individual is currently employed or serves."
- **Massachusetts:** No workers' compensation cancer presumption. Eligibility for a disability pension includes a cancer presumption that requires 5 years minimum employment and expires 5 years after retirement.
- **Michigan:** No workers' compensation cancer presumption. In 2016, Michigan established a special "First Responders Fund". Coverage requires 5 years minimum employment and limited to full-time firefighters. The cancer must manifest while the firefighter is employed.
- **Minnesota:** To be eligible for a presumption in workers' compensation, the claimant must be an active fire fighter *immediately* prior to reporting the claim. The presumption is limited to certain cancers and may be rebutted by "substantial factors."
- **Mississippi:** No workers' compensation cancer presumption.
- **Missouri:** No workers' compensation cancer presumption. Eligibility for a disability pension includes a cancer presumption.
- **Montana:** No workers' compensation cancer presumption.

- **Nebraska:** The workers' compensation presumption expires 3 months after retirement and is limited to certain cancers.
- **Nevada:** 5 years minimum employment required and the presumption expires 5 years after leaving the fire service. The presumption is rebuttable.
- **New Hampshire:** The workers' compensation presumption expires 20 years after leaving the fire service or age 65. The presumption is limited to certain cancers.
- **New Jersey:** The workers' compensation presumption was established by the NJ Supreme Court in the 2003 decision in Lindquest v Jersey City.
- **New Mexico:** The minimum period of employment for the workers' compensation presumption varies by disease. Volunteers are excluded from the presumption.
- **New York:** No workers' compensation cancer presumption. Eligibility for a disability pension includes a cancer presumption. In 2017, New York adopted legislation that requires Fire Departments to purchase cancer disability insurance for volunteers.
- **North Carolina:** No workers' compensation cancer presumption.
- **North Dakota:** 5 years minimum employment required and the presumption expires 5 years after retirement from the fire service. Volunteers excluded from the presumption.
- **Ohio:** 6 years minimum employment required and the presumption expires 20 years after retirement or at age 70. The presumption may be rebutted by "competence evidence to the contrary" or that the use of tobacco was a significant factor.
- **Oklahoma:** The workers' compensation presumption is limited to firefighters while they are employed and the benefit is limited to medical treatment. Eligibility for a disability pension also includes a cancer presumption.
- **Oregon:** 5 years minimum employment required and the presumption expires 84 months after retirement from the fire service. Volunteers are excluded from the presumption. The presumption is limited to certain cancers and the claim may be rebutted by "clear and convincing evidence" that the condition is not work related or that the use of tobacco was a major contributing cause.
- **Pennsylvania:** 4 years minimum employment required and presumption expires 300 weeks after retirement.
- **Rhode Island:** No workers' compensation cancer presumption. Eligibility for a disability pension includes a cancer presumption.
- **South Carolina:** No workers' compensation cancer presumption.
- **South Dakota:** No workers' compensation cancer presumption. Eligibility for a disability pension includes a cancer presumption.

- **Tennessee:** No workers' compensation cancer presumption. Eligibility for a disability pension includes a cancer presumption.
- **Texas:** 5 years minimum employment required and the presumption expires when the fire fighter retires. Texas excludes smokers from the presumption.
- **Utah:** No workers' compensation cancer presumption.
- **Vermont:** 5 years minimum employment required and the presumption expires 10 years after retirement. Claims must also be reported before age 65 and can be rebutted by "the preponderance of the evidence." The presumption does not apply to fire fighters who used tobacco products within 10 years of the date of diagnosis.
- **Virginia:** 12 years minimum employment required and the claim must be reported within 5 years of leaving the fire service. The presumption can be rebutted by the "preponderance of the evidence." The presumption is limited to certain cancers.
- **Washington:** 10 years minimum employment required and the presumption expires 5 years after retirement. The presumption can be rebutted by the "preponderance of the evidence". Washington excludes volunteers and smokers from the presumption.
- **West Virginia:** No workers' compensation cancer presumption.
- **Wisconsin:** 10 years minimum employment required and the presumption excludes volunteers and smokers.
- **Wyoming:** No workers' compensation cancer presumption.