



June 20, 2018

Medical Conditions Presumed to be Duty-related

EDUCATIONAL BRIEFING

By Steve Nelsen

Executive Director

360-586-2320

steve.nelsen@leoff.wa.gov

ISSUE STATEMENT

Certain medical conditions are presumed to be duty-related for Worker's Compensation and LEOFF Plan 2 pension purposes. Legislation was proposed in the 2018 session that sought to expand coverage of duty-related presumptions. This bill did not pass.

OVERVIEW

Engrossed Senate Bill 6213 (2018)

Brief Summary of Engrossed Bill

- Makes the occupational disease presumptions for certain fire fighters applicable to certain emergency medical technicians and public employee fire investigators.
- Adds additional cancers to the cancer occupational disease presumption.
- Creates an occupational disease presumption for heart problems and infectious diseases for law enforcement officers.

Scope of Report

This report will cover the state of current law regarding occupational illnesses for LEOFF 2 members; how ESSB 6213 would have changed the law; and policy issues raised during the deliberation of ESSB 6213 that may be of interest to the LEOFF Plan 2 Retirement Board.

Current Law

Under the state's Industrial Insurance Act (Act), a worker who, in the course of employment, is injured or suffers disability from an occupational disease is entitled to certain benefits. To prove an occupational disease, the worker must show that the disease arose "naturally and proximately" out of employment.

For fire fighters who are members of LEOFF 2, there is a presumption that certain medical conditions are occupational diseases. Those conditions are: respiratory disease; heart problems; specified cancers; and infectious diseases. With respect to heart problems, the problems must be experienced within 72 hours of exposure to smoke, fumes, or toxic substances; or experienced within 24 hours of strenuous physical exertion due to firefighting activities. For cancers, the firefighter must have served at least 10 years before the cancer develops or manifests itself and received a qualifying medical examination (exam) upon becoming a firefighter that showed no evidence of cancer.

The presumption of occupational disease (presumption) may be rebutted by a preponderance of evidence, including: (1) use of tobacco products; (2) physical fitness and weight; (3) lifestyle; (4) hereditary factors; and (5) exposure from other employment or non-employment activities. In addition, the presumption does not apply to a firefighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use.

The following cancers are currently not covered under the presumption for fire fighters in LEOFF 2:

- Mesothelioma
- Adenocarcinoma
- Stomach cancer
- Esophageal cancer
- Buccal cancer
- Pharynx cancer
- Non-melanoma skin cancer
- Breast cancer

In addition, methicillin-resistant staphylococcus aureus (MRSA) is not listed under infectious diseases, and stroke is included under the same limitations as heart problems (problems must be experienced within 72 hours).

Emergency medical technicians are included in the membership of the LEOFF as "firefighters" if they work on a full-time, fully compensated basis for certain public employers, and their duties include providing emergency medical services.

Law enforcement officers are not protected by a presumption for occupational illness/injury in Washington State. While the occupational illness/ injury provisions in the Workers' Compensation statutes do apply to law enforcement officers, the burden of proof to qualify for

these benefits falls on the member. Federal law contains a presumption for heart attack and stroke under the Public Safety Officers' Benefit (PSOB) program which applies to law enforcement officers in Washington State.

BACKGROUND AND POLICY ISSUES

Summary of ESSB 6213 (2018):

Emergency medical technicians who are in the LEOFF and public employee fire investigators are included in the list of workers covered by the presumptions for firefighters. If these individuals became a fire fighter or fire investigator before the effective date of the bill and the employer did not provide a medical exam, the exam requirement is satisfied if the fire fighter or fire investigator receives an exam on or before July 1, 2019. If the fire fighter or fire investigator is diagnosed with a covered cancer at this exam, the presumption applies. If the employer does not provide an exam of a fire fighter or investigator, the presumption applies.

The following cancers are added to the presumption:

- mesothelioma;
- adenocarcinoma;
- stomach cancer;
- esophageal cancer;
- buccal cancer;
- pharynx cancer;
- non-melanoma skin cancer;
- breast cancer; and
- cervical cancer.

In addition, methicillin-resistant staphylococcus aureus (MRSA) is added to the list of infectious diseases.

A presumption is established for law enforcement officers that heart problems, under very similar limitations as for heart problems for fire fighters, and infectious diseases are occupational diseases. The strenuous physical exertion requirement for heart problems applies to exertion by a law enforcement officer in the line of duty.

Policy Issues Raised by ESSB 6213

1. **Law Enforcement Officers:** Should a presumption be created for heart attacks suffered by law enforcement officers?

2. **Emergency Medical Technicians:** Should the presumptions be expanded to include certain emergency medical technicians and fire investigators not covered under current law?
3. **Strokes:** Should strokes be provided the same treatment as heart attacks?
4. **Infectious Diseases:** Should a presumption be created for certain infectious diseases?
5. **Cancer:** Should the current list of cancers covered by the presumption be expanded? If so, what standards should be applied when considering adding additional cancers (or removing currently covered under the existing presumption)?



Medical Conditions Presumed to be Duty-related

Educational Briefing
June 20, 2018

Issue Statement

- Certain medical conditions are presumed to be duty-related for Worker's Compensation and LEOFF Plan 2 pension purposes. Legislation was proposed in the 2018 session that sought to expand coverage of duty-related presumptions. The bill did not pass.

Current Law

- For LEOFF 2 Fire Fighters it is a presumption that certain medical conditions are occupational diseases.
- Some EMTs are covered under the fire fighter presumptions.
- Law Enforcement Officers are not covered under any Workers' Compensation presumptions in the state of Washington.
- Federal law contains a presumption for heart attack and stroke under the Public Safety Officers' Benefit (PSOB) program which applies to law enforcement officers in Washington State.

Summary of ESSB 6213 (2018)

- **Makes the occupational disease presumptions for certain fire fighters applicable to certain emergency medical technicians and public employee fire investigators.**
- **Adds additional cancers to the cancer occupational disease presumption.**
- **Creates an occupational disease presumption for heart problems and infectious diseases for law enforcement officers.**

Policy Issues

- **Questions raised:**
 - **Law Enforcement Officers:** Should a presumption be created for heart attacks suffered by law enforcement officers?
 - **Emergency Medical Technicians:** Should the presumptions be expanded to include certain emergency medical technicians and fire investigators not covered under current law?
 - **Strokes:** Should strokes be provided the same treatment as heart attacks?
 - **Infectious Diseases:** Should a presumption be created for certain infectious diseases?
 - **Cancer:** Should the current list of cancers covered by the presumption be expanded? If so, what standards should be applied when considering adding additional cancers (or removing currently covered under the existing presumption)?



Thank You

Steve Nelsen

Executive Director

(360) 586-2323

steve.nelsen@leoff.wa.gov