

The Firefighter Presumptive law 1 year later: The Good The Bad and The Reality

It has now been one year since the presumptive firefighter legislation went into effect. On April 6, 2017, Senate Bill 27 became effective. This legislation presumed that a firefighter with 6 years of hazardous duty and develops cancer was caused by his or her occupation.

Now that one year has passed, what has this legislation done for firefighters?

The BWC opposed this legislation which would provide medical benefits and indemnity compensation for firefighters for their occupational cancer stating it would open the flood gates for cancer claims and cost the BWC nearly one million dollars.

So where do these cancer claims for firefighters stand today? What good has come from this new legislation? What negative impact has this legislation had on the BWC, firefighters and employers of firefighters? Where does the reality of this legislation stand after one year?

First, the BWC established a policy to address claims filed by firefighters diagnosed with cancer that pre-date the effective date of the legislation. The BWC policy will allow a cancer claim if the statute of limitations components of *White v. Mayfield* is met. This means that if the cancer was diagnosed before April 6, 2017, but the firefighter continues to work, i.e. the cancer diagnosis has not caused the firefighter to quit the job, then BWC applies the presumption. There are many other claim scenarios regarding this policy which have yet to be interpreted by the BWC/Industrial Commission to date. Once more claims are filed and make their way through the administrative proceedings, more clarity will be brought to effective date of the presumption and cancer diagnosis.

According to the BWC, as of March 6, 2018, the BWC has recorded 48 claims filed. The BWC indicated that the presumption was met in 29 of these claims. The BWC found the presumption not been met in 15 claims. Four claims have yet to be processed. Also, \$46,103.19 has been spent in medical and indemnity costs for these allowed claims resulting in an average of \$1,589.76 per claim. However, of the claims allowed by the BWC, many employers have appealed. In December 2017, the BWC stated 40 claims had been filed with 18 in the allow/appeal status; 13 in the deny/appeal status, 4 yet to be processed and 5 self-insured claims. The BWC/Industrial Commission administrative process can take many months to be fully adjudicated. Further claim data will become available as more time passes.

What negative impact has this legislation had on firefighters, employers and the BWC system? First, firefighters overwhelmingly have been let down and disappointed by their employer's response to these claims. Many cities and townships spoke up to support the legislation to protect their firefighters who service and protect their communities. But now, these same employers have filed appeals, contrary medical evidence to rebut the presumption, have retained legal counsel to fight the claims and have delayed claims by requesting continuances for additional medical. I know that many of these firefighters, who are devoted to their job and have cancer because of this job feel betrayed by these actions. The questions asked of me from these firefighters consistently is: why? Why do the employers fight the BWC claim, when the firefighter's health insurance, provided by the employer as well, will be responsible for the cancer treatment costs otherwise? I believe the fear of the anticipated medical/indemnity costs of the claim with potential death benefits is leading employers to take the steps to fight the filed cancer claims as these liabilities would be greater than under private medical insurance.

So what good has come from this new legislation? I do not believe the most significant benefit has helped the firefighter already diagnosed with cancer. Sadly, many of the employers are not standing with their firefighters who have already contracted cancer. Rather, I believe, the most significant benefit of the legislation has and will be the awareness of the harmful exposures firefighters face at their jobs. Fire departments are now implementing policy changes which require firefighters to clean their gear and take other protective measures to prevent exposures to the now known harmful carcinogens. The Columbus

Dispatch reported on March 5, 2018 that the BWC is investing an additional \$2.7 million in grant money (over the already awarded \$2 million) in the upcoming months. The additional grant money will go towards new gear, new equipment and improvements to fire stations to better protect firefighters. Also, certainly the firefighters with cancer claims that have been allowed have benefited from the presumptive legislation in terms of medical costs they do not have to personally incur and payment for total disability as a result of the cancer.

I believe more work needs to be done to support the rights of the firefighters with occupationally caused cancer. Looking to the future of the presumptive statute, I hope that the significant grant money the BWC is providing fire departments, who might not otherwise be able to afford improvements, and continued education on the dangers of the exposures will prevent firefighters from contracting cancer. However, until that time comes, we must continue to fight for the firefighters already diagnosed with cancer.