

SJR 30 Studies  
Occupational Disease Presumptions  
Recommendations to the LMAC  
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A Presumptive Occupational Disease Law:

- Links a particular occupation with a disease or condition that has been shown to be or is considered to be a hazard associated with that occupation
- Shifts the burden of proof from the employee having to prove they contracted the disease at work to the employer having to prove the condition was not associated with the occupation, but another cause

Source: *Presumptive Duty Related Illnesses for Law Enforcement Officers, Preliminary Report*, Washington Law Enforcement Officers' and Firefighter's Plan 2 Retirement Board, page 2

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## The Public Policy Debate

- A political and emotional issue more than an evidence based issue for many
- “...there is a lack of substantive scientific evidence currently available to confirm or deny linkages between firefighting and an elevated incident of cancer...”\*
- Proponents believe the public owes a special duty to the public safety officers that put themselves in harms way to protect people and property
- Opponents don't deny this special duty we owe public safety officers but want to know how to pay for the additional costs

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\*Assessing State Firefighter Cancer Presumption Laws and Current Firefighter Cancer Research, April, 2009, TriData Division, System Planning Corp, page VII

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## Two Methods of Enacting Occupational Presumption Laws

- Through disability retirement statutes

and/or

- Through workers' compensation statutes
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## Methods Used By Comparator States

- AK, ID, NM, ND and OR cover occupational presumptions under their wc statutes
- MT, SD, and WY cover occupational presumptions under their disability retirement statutes
- Washington covers them under both

## Conditions Presumed to be Contracted in the Line of Duty for Firefighters:

- Most often these are:
  - Heart attacks or cardiovascular diseases
  - Respiratory diseases
  - Infectious diseases
- Less common but prevalent are:
  - Hypertension
  - Specific cancers, and
  - Strokes

Source: Comparator survey responses and a review of state statutes

## Summary of Comparator State Survey Responses on Presumptions for Firefighters

- 6 out of 9 Comparator states cover occupational presumptions under their WC Statutes
- Most (4 out of 6) have chosen to cover only specific cancers, most common are:
  - Brain cancer (6) malignant melanoma (5) leukemia (6) non-Hodgkin's lymphoma (6), bladder cancer (5), ureter cancer (5) and kidney cancer (5)
- In addition, most states covering cancer require significant exposure prior to entitlement

## Variations on Exposure Requirements Prior to Presumption Entitlement

- Attempt to separate occupational disease exposure from “ordinary diseases of life”
- Most cover only full time paid public safety officers (although some cover volunteers)
- Most have a timeframe for being on the job before cancers are presumptive or a timeframe from retirement
- Variations in comparator states range from 4 years in ID to 15 years for kidney cancer and others in NM. Most also require a clean physical prior to hire

## Differences in Funding Mechanisms

- Workers' compensation occupational presumptions for firefighters are funded through wc premiums or directly by the municipality if self insured
- Disability retirement provisions are usually funded through contributions from both the employees and the employer
- Benefits are likely very different

## Issues Faced By Some States Funding Firefighter Presumptions Under the Workers' Compensation Statute

- In California, Connecticut, New Hampshire and Maine issues arose around the legislatures passing a requirement as an unfunded mandate for municipalities
- In California, the state initially had to reimburse the municipalities for the cancer presumption
- Connecticut repealed their occupational presumption in 1996 as part of a property tax reform initiative

## Issues Faced By Some States Funding Firefighter Presumptions Under the Workers' Compensation Statute

- Cancer presumptions were found unconstitutional in New Hampshire as an unfunded mandate
- Maine's law, passed in 2009 also contained a provision that unless the General Fund appropriated at least 90% of the additional costs, municipalities may not be required to implement the changes

## Recommendations:

- Enacting a set of occupational presumptions for firefighters at this time does not seem to assist Montana in accomplishing either a reduction of costs for employers or significantly improve benefits for the majority of workers. Recommendation is against enacting such at this time.
- If the LMAC and/or the legislature disagree, they should consider only a limited list such as heart attacks, respiratory diseases and other cardio vascular conditions where symptoms occur within a short timeframe after exposure where prior exams showed no such symptoms or conditions.