

The following comment is from Alan Tresemer of Darby, who has been invited to give a volunteer firefighter's view on the presumptive disease law for firefighters.

Guilty Until Proven Innocent

Presumptive Illness Laws were supposed to make it easier for firefighters to claim insurance coverage for medical issues that are often caused by their firefighting activities. Montana jumped into this arena to help firefighters. But the result might be just the opposite of what we wanted.

Let me introduce myself. I am Alan Tresemer, fire chief. I have been a volunteer fire chief in Montana for many years and in the industry for decades. I was one of the founders of our fire district in 2000. In all that time since then, I cannot identify any significant benefits to my volunteer for being firefighters other than the satisfaction of helping their neighbors. No legislation stands out as assistance for their sacrifice. The recent "presumptive illness" law is no help. It is a significant burden.

Legislators and firefighters alike thought the presumptive illness laws meant that if we (firefighters) get a disease that is common to firefighters, insurance companies such as Workers Comp would presume that the disease was due to our firefighting activities. The Veterans Administration approaches it this way: "...VA presumes that unexplained symptoms are related to Gulf War service if a Veteran has experienced them for six months or more. By assuming a link between symptoms and military service, it can simplify and speed up the application process for benefits." [U.S. DoVA](#)

In their research, the Montana Legislative Services found that "...these laws typically provide workers' compensation coverage without requiring specific, traceable connections between the work-related incident and an illness that might develop...The presumption means that an illness recognized as related to toxins present at fires or other first responder hazardous sites are automatically considered to cause a work-related injury for which workers' compensation is available without the injured worker having to prove a relationship between the job and the illness." Montana's Department of Labor and Industries states, "...if an individual employed in the occupation covered by the presumption contracts a disease or condition that is specified in the presumptive law, then that disease or condition is presumed to have come from that occupation. The burden of proof shifts from the employee to the employer."

This coverage is what firefighters wanted. It is not what they received.

Legislative Services also notes that, "Opponents of presumptive illness bills cite higher premiums to cover presumptive disease and also see a slippery slope created with the first list of illnesses (for which a direct relationship is not required) leading to more and more lists."

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These opponents have managed to win the day and require that Montana law assume that every disease came from some other source and that it is the obligation of the firefighter to prove that the disease came from firefighting activities.

This is exactly the opposite of the original intent.

Now, for a firefighter to attain the standard, he must run the obstacle course.

This is the burden of proof.

1. Is there any history of the disease in family members? An uncle who contracted the same disease might suggest a genetic predisposition to the disease, even if that uncle was not genetically prone to that disease but was exposed to similar toxins. Maybe he was also a firefighter.
2. If a firefighter is genetically prone to a disease but would not normally get that disease without the additional exposure during firefighting, that firefighter is not eligible for coverage.
3. Was there any sign of the disease before the firefighter became a firefighter, perhaps from an exposure to toxins? A thorough medical examination is required when a firefighter is hired to try to find preexisting diseases. The tests are specified by the State of Pennsylvania and are extensive and expensive.
4. Ongoing medical checkups with further testing are required on a specific schedule. Early diagnosis might help in treating a disease. But the costs are formidable. VFIS/Pennsylvania State FIRS are setting a standard of testing, reporting, and proof. These tests are unaffordable for most Montana firefighters or their districts.
5. Can the firefighter prove that he was exposed "to smoke or particles in a quantity sufficient to have reasonably caused the disease claimed"? This must be documented, preferably meeting the Pennsylvania standard. If not documented, it did not happen. Few researchers would claim that any amount of exposure "reasonably caused the disease". What standard of proof will an insurer require and from whom? If a volunteer firefighter cannot show that he or she has been exposed often, for a long time, and to heavy toxins, the claim will be denied. (According to MT DPHHS)
6. MCA states the insurer can assert "that the occupational disease was not caused by the firefighter's employment history as a firefighter." The firefighter must prove his case in court. There is no presumption of illness. Insurers will fight claims.
7. Early diagnosis will disprove a claim. (If the disease shows up faster than current technology normally detects it, it is presumed that the disease is from pre-firefighting exposure, regardless of early medical exams.) Will the law be updated as testing protocols improve to find diseases earlier?
8. The most frequent firefighter diseases (behavioral health issues) are not covered by the law. Why not? PTSD is caused by emotional and physical trauma. Does the job impact a

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firefighter holding an infant gasping its last breaths? Is a firefighter who has pushed himself far past any reasonable limit trying to save somebody's home affected? Agencies still aren't dealing with these assaults. Neither is Montana law. Why ignore the most prevalent diseases that cripple our responders?

9. Smoking makes a firefighter ineligible for claims. Even second-hand smoke disqualifies. The presumption is that the firefighter acquired the disease from something other than firefighting.
10. The worst situation: ALL of my firefighters are ineligible for coverage. They did not meet the requirements of the law by getting a substantial medical examination meeting the requirements of the State of Pennsylvania when they joined our fire agency years ago. They also did not document their periodic medical checkups. They also did not document their exposure to smoke during their tenure with my agency. They are guilty because the Presumptive Illness law presumes that they are guilty.
11. Finally, current Workers Comp rates are too much for most fire districts. Higher rates won't help. If coverage is mandatory, how will they manage?

We started out by trying to give firefighters a break: Presume that their disease was caused by their firefighting. This idea was probably originated by someone who wanted to thank firefighters for their work. Then someone decided that we should weed out firefighters who already had that disease before they started fighting fire... or had a genetic relative who had a similar disease... or the firefighter never encountered anything during firefighting that would likely lead to it... or they lived with someone who smoked... or they didn't fill out a lengthy form after every incident...

Finally, we decided that if we are going to cover these issues, firefighters are going to pay for them. There are real costs involved that should not be placed on the taxpayer! If somebody wants to fight fire, they need to assume the risks and pay the price!

That decision came from the insurance adjusters who knew that someone would eventually have to pay for the coverage and costs. Those same people would fight to deny any claim. That is their job.

The law is no gift to firefighters; they will pay for it. Worse, if coverage becomes mandatory for volunteer fire agencies, those firefighters or their agencies who don't want the coverage will end up subsidizing coverage for those who do want it (mostly career firefighters). This appears to have been the plan all along.

Several adjustments to the legislation might help:

1. Make it possible for current firefighters to enter the system.

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2. Do not require any volunteer agency to buy coverage because most can't afford it and don't want it.
3. Quit calling this law "presumptive illness". It is just the opposite.

Thank you,
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