

RCW 51.32.185 Occupational diseases—Presumption of occupational disease for firefighters and fire investigators—Limitations—Exception—Rules—Advisory committee on occupational disease presumptions.

(1) (a) In the case of firefighters as defined in RCW 41.26.030(17) (a), (b), (c), and (h) who are covered under this title and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and public employee fire investigators, there shall exist a prima facie presumption that: (i) Respiratory disease; (ii) any heart problems, experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; (iii) cancer; and (iv) infectious diseases are occupational diseases under RCW 51.08.140.

(b) In the case of firefighters as defined in RCW 41.26.030(17) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in RCW 41.26.030(19) (b), (c), and (e), who are covered under this title, there shall exist a prima facie presumption that posttraumatic stress disorder is an occupational disease under RCW 51.08.140.

(c) In the case of law enforcement officers as defined in RCW 41.26.030(19) (b), (c), and (e) who are covered under Title 51 RCW, there shall exist a prima facie presumption that: (i) Any heart problems, experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion in the line of duty; and (ii) infectious diseases are occupational diseases under RCW 51.08.140.

(d) This presumption of occupational disease established in (a), (b), and (c) of this subsection may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

(2) The presumptions established in subsection (1) of this section shall be extended to an applicable member following termination of service for a period of three calendar months for each year of requisite service, but may not extend more than sixty months following the last date of employment.

(3) (a) The presumption established in subsection (1) (a) (iii) of this section shall only apply to any active or former firefighter or fire investigator who:

(i) Has cancer that develops or manifests itself after the firefighter or fire investigator has served at least ten years; and

(ii) (A) Was given a qualifying medical examination upon becoming a firefighter or fire investigator that showed no evidence of cancer; or

(B) (I) For a firefighter or fire investigator who became a firefighter or fire investigator on or after July 28, 2019, the employer did not provide a qualifying medical examination upon becoming a firefighter or fire investigator; or

(II) For a firefighter or fire investigator who became a firefighter or fire investigator before July 28, 2019, the employer did not provide a qualifying medical examination upon becoming a

firefighter or fire investigator and the employer provides a qualifying medical examination on or before July 1, 2020. If a firefighter or fire investigator described in this subsection (3) (a) (ii) (B) (II) did not receive a qualifying medical examination before July 1, 2020, or is diagnosed with a cancer listed in (b) of this subsection at the time of the qualifying medical examination under this subsection (3) (a) (ii) (B) (II) and otherwise meets the requirements of this section, the presumption established in subsection (1) (a) (iii) of this section applies.

(b) The presumption established in subsection (1) (a) (iii) of this section shall only apply to the following cancers: Prostate cancer diagnosed prior to the age of fifty, primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple myeloma, testicular cancer, kidney cancer, mesothelioma, stomach cancer, nonmelanoma skin cancer, breast cancer in women, and cervical cancer.

(4) The presumption established in subsection (1) (a) (iv) and (c) (ii) of this section shall be extended to any firefighter, fire investigator, or law enforcement officer who has contracted any of the following infectious diseases: Human immunodeficiency virus/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, or mycobacterium tuberculosis.

(5) The presumption established in subsection (1) (b) of this section only applies to active or former firefighters as defined in RCW 41.26.030(17) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in RCW 41.26.030(19) (b), (c), and (e) who have posttraumatic stress disorder that develops or manifests itself after the individual has served at least ten years.

(6) If the employer does not provide the psychological exam as specified in RCW 51.08.142 and the employee otherwise meets the requirements for the presumption established in subsection (1) (b) of this section, the presumption applies.

(7) Beginning July 1, 2003, this section does not apply to a firefighter, fire investigator, or law enforcement officer 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 department, using existing medical research, shall define in rule the extent of tobacco use that shall exclude a firefighter, fire investigator, or law enforcement officer from the provisions of this section.

(8) For purposes of this section, "firefighting activities" means fire suppression, fire prevention, fire investigation, emergency medical services, rescue operations, hazardous materials response, aircraft rescue, and training and other assigned duties related to emergency response.

(9) (a) When a determination involving the presumption established in this section is appealed to the board of industrial insurance appeals and the final decision allows the claim for benefits, the board of industrial insurance appeals shall order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter, fire investigator, or law enforcement officer, or his or her beneficiary by the opposing party.

(b) When a determination involving the presumption established in this section is appealed to any court and the final decision allows the claim for benefits, the court shall order that all reasonable

costs of the appeal, including attorney fees and witness fees, be paid to the firefighter, fire investigator, or law enforcement officer, or his or her beneficiary by the opposing party.

(c) When reasonable costs of the appeal must be paid by the department under this section in a state fund case, the costs shall be paid from the accident fund and charged to the costs of the claim.

(10)(a) The director must create an advisory committee on occupational disease presumptions. The purposes of the advisory committee are to review scientific evidence and to make recommendations to the legislature on additional diseases or disorders for inclusion under this section.

(b)(i) The advisory committee shall be composed of five voting members, appointed by the director as follows:

(A) Two epidemiologists;

(B) Two preventive medicine physicians; and

(C) One industrial hygienist.

(ii) The research director of the department's safety and health assessment and research for prevention program shall serve as the advisory committee nonvoting chair.

(iii) Members serve for a term of four years and may be reappointed. Members shall not be compensated for their work on the advisory committee. As a condition of appointment, voting members and the chair must have no past or current financial or personal conflicts of interest related to the advisory committee activities. Voting members of the advisory committee may not be current employees of the department.

(c) The chair or ranking member of the appropriate committee or committees of the legislature may initiate a request for the advisory committee to review scientific evidence and to make recommendations to the legislature on specific disorders or diseases, or specific occupations, for inclusion under this section by notifying the director.

(d) The process of developing an advisory committee recommendation must include a thorough review of the scientific literature on the disease or disorder, relevant exposures, and strength of the association between the specific occupations and the disease or disorder proposed for inclusion in this section. The advisory committee must give consideration to the relevance, quality, and quantity of the literature and data. The advisory committee may consult nationally recognized experts or subject matter experts in developing its recommendations. The advisory committee must provide a recommendation to the legislature within the earlier of one hundred eighty days of the request or when the advisory committee reaches a consensus recommendation.

(e) Each recommendation must include a written description of the scientific evidence and supporting information relied upon to assess the causal relationship between the occupation and health condition proposed for inclusion under this section. Estimates of the number of Washington workers at risk, the prevalence of the disease or disorder, and the medical treatment and disability costs should, if available, be included with the recommendation.

(f) The recommendation must be made by a majority of advisory committee's voting members. Any member of the advisory committee may provide a written dissent as an appendix to the committee's recommendation.

(g) The department's safety and health assessment and research for prevention program shall provide organizational and scientific

support to the advisory committee. Scientific support must include for consideration of the advisory committee preliminary written reviews of the scientific literature on the disease and disorder, relevant exposures, and strength of the association between the specific occupations and the health condition or disorders proposed for inclusion in this section. [2019 c 133 s 1; 2018 c 264 s 3; 2007 c 490 s 2; 2002 c 337 s 2; 1987 c 515 s 2.]

Legislative findings—1987 c 515: "The legislature finds that the employment of firefighters exposes them to smoke, fumes, and toxic or chemical substances. The legislature recognizes that firefighters as a class have a higher rate of respiratory disease than the general public. The legislature therefore finds that respiratory disease should be presumed to be occupationally related for industrial insurance purposes for firefighters." [1987 c 515 s 1.]