

## Presumption of occupational disease for firefighters – RCW 51.32.185

### **What is the presumption and who does it affect?**

Because of the innate hazards in certain occupations, the legislature established RCW 51.32.185 in 1987. The law creates a presumption that there is a connection between occupational exposures on the job and certain illness. The law has been amended multiple times. The most recent update became effective July 28, 2019. In this update, the legislature expanded the conditions covered and added additional occupations to the presumption. This document outlines who may be covered for the various conditions in the presumption, and what those conditions are.

### **Firefighters, fire investigators, & emergency medical technicians (EMTs)**

For the purpose of this law, firefighters are defined as public firefighters and private firefighters (if department includes over 50 firefighters) including supervisors, that are employed full-time, and fully compensated. Public employee fire investigators are also included as well as full-time, fully compensated emergency medical technicians (for details see RCW 41.26.030 (17) (a), (b), (c), and (h)).

### **Law enforcement officers**

Law enforcement officers are defined as any person who is commissioned and employed on a full-time, fully compensated basis to enforce the criminal laws of the state of Washington (for details see RCW 41.26.030 (19) (b), (c), and (e)).

### **Respiratory disease in firefighters, fire investigators and EMTs**

The law established a presumption that respiratory disease is an occupational disease for firefighters, fire investigators and emergency medical technicians

The presumption of coverage doesn't apply if the worker regularly uses tobacco products, and it may not apply if the worker has a history of tobacco use.

### **Cancer in firefighters, fire investigators and EMTs**

The law also establishes a presumption that certain cancers are occupational diseases for firefighters, fire investigators and EMTs.

The covered cancers are:

- Prostate cancer (diagnosed prior to the age of 50)
- 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
- Non-melanoma skin cancer
- Breast cancer in women
- Cervical cancer

The presumption only applies if the cancer develops or manifests itself after a worker has served at least 10 years, and:

- For those hired prior to July 28, 2019, was given a qualifying medical examination upon hire that showed no evidence of cancer.
- For those hired on or after July 28, 2019, either was given a qualifying medical examination that showed no evidence of cancer or was never given a qualifying medical examination.

### **Heart problems in firefighters, fire investigators, EMTs and law enforcement officers**

Heart problems are presumed to be an occupational disease for firefighters, fire investigators and law enforcement officers if the symptoms are experienced:

- Within 72 hours of exposure to smoke, fumes, or toxic substances.
- Within 24 hours of strenuous physical exertion due to firefighting activities for firefighters, fire investigators and EMTs.
- Within 24 hours of strenuous physical exertion in the line of duty for law enforcement officers.

Firefighting activities are defined as:

- Fire suppression
- Fire prevention
- Fire investigation
- Emergency medical services
- Rescue operations
- Hazardous materials response
- Aircraft rescue

- Training
- Other assigned duties related to emergency response

The presumption of coverage doesn't apply if the worker regularly uses tobacco products, and it may not apply if the worker has a history of tobacco use.

### **Infectious diseases in firefighters, fire investigators, EMTs and law enforcement officers**

Certain infectious diseases are presumed to be an occupational disease for firefighters, fire investigators, EMTs and law enforcement officers.

The covered infectious diseases are:

- Human immunodeficiency virus (HIV)
- Acquired immune deficiency syndrome (AIDS)
- Hepatitis (all strains)
- Meningococcal meningitis
- Mycobacterium tuberculosis

### **Posttraumatic stress disorder (PTSD) in firefighters, EMTs and law enforcement officers**

Effective June 7, 2018, RCW 51.32.185 was expanded to include the presumption that PTSD was an occupational disease.

The following criteria must be met for the PTSD presumption to apply:

- The worker must have had a mental health examination administered by a psychiatrist or a psychologist that ruled out the presence of PTSD from pre-employment exposures. Or, they did not receive an examination because none was required.
- PTSD manifested after the individual has served at least 10 years.
- Have a PTSD diagnosis that meets the diagnostic criteria specified by the American Psychiatric Association in the diagnostic and statistics manual of mental disorders, fifth addition, or in a later edition as adopted by the department (RCW 51.08.165).

PTSD is not considered an occupational disease if the disorder is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination or similar action taken in good faith by an employer (RCW 51.08.142).

If a worker experiences a single, traumatic event that leads to a mental condition this would not be considered under the presumption law. Instead, this would be reviewed as a specific injury claim.

### **How long will these presumptions last?**

After the applicable employment ends, the presumption is extended for three calendar months for each year of service, up to a maximum of 60 months from the last date the worker was employed.

## Challenges to the presumption coverage

The previous presumptions may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to:

- Use of tobacco products
- Physical fitness
- Weight
- Lifestyle
- Hereditary factors
- Exposure from other employment or non-employment activities

## How do I file a claim?

**If your employer was self-insured:** Contact your employer and they will supply you with a *Self-Insurer Accident Report (SIF-2)* and can discuss the process in detail with you. Please complete the form and return it to them as soon as possible.

**If your employer was State Fund:** You can file the accident report at your doctor's office, on L&I's website 24 hours a day ([filefast.lni.wa.gov](http://filefast.lni.wa.gov)), or by calling L&I (877-561-3453) Monday through Friday, 8 a.m. to 5 p.m. If you complete the accident report at your doctor's office, the doctor files the form for you.

If you're not sure if your employer is self-insured or State Fund, contact your employer and they can assist you.

## Legal fees

When a determination involving these presumptions is appealed to the Board of Industrial Insurance Appeals (BIIA) or any court, and the final decision allows the claim, the opposing party must pay all reasonable costs of the appeal to the worker or their beneficiary including attorney fees and witness fees.

If you have additional questions, contact Debra Hatzialexiou at the Department of Labor & Industries at 360-902-6695.

## Other applicable laws

RCW 18.71.200 – Physician's trained advanced emergency medical technician and paramedic - definition

RCW 18.73.030 – Definitions

RCW 41.26.030 – Definitions

RCW 51.08.140 – Occupational disease

RCW 51.08.142 – “Occupational disease” Exclusion of mental conditions caused by stress, except for certain firefighters

RCW 51.08.165 – “Posttraumatic stress disorder”

WAC 296-14-310 – When does a presumption of occupational disease for firefighters apply?

WAC 296-14-320 – Does the presumption apply to current smokers with heart or lung conditions?

WAC 296-14-325 – When does the presumption apply to former smokers with heart or lung conditions?

WAC 296-14-330 – What tobacco use shall exclude a firefighter from a presumption of coverage?