

# Oregon's Workers' Compensation Law: The Firefighters' Presumption

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# What we hope to accomplish

- History of SDAO
- History of Workers Compensation
- What is WC's Place
- The two FF Presumptions
  - What they are
  - What they are NOT
- Examples / Opportunities
- Your Role as Management
- How SDAO or your WC Carrier can help
- Any Questions?

# History of SDAO

- In 1978 Special Districts Association of Oregon was formed
  - Give small public entities a strong voice in the legislature
  - Bring commonality and further credibility to a very diverse group of members – Currently 35 different types of members

# History of SDAO

- 1985 Special Districts Insurance Services was formed (PC only)
  - Hard Insurance Market
  - Member based – Member Owned

# History of SDAO

- July 1, 1988 the SDIS formed a Workers Compensation Program
  - Hard Insurance Market
  - Member based – Member Owned

# Oregon's Workers' Compensation Law

- Oregon adopted its first Workers' Compensation Act in 1913 covering employers who chose to contribute to the fund.
- Oregon Workers' Compensation Laws were revised in the 1960's to require employers with subject workers to participate.
- More significant changes in the early 1990's and 2001.

# Why Have a WC System at All?

- Public policy decision
- Constitutes a bargain between Workers and Employers
  - Workers get benefits quickly and efficiently.
  - Uniform system of benefits created by legislature.
  - Employers get protection from exposure to civil litigation associated with allegations of negligence tied to workplace injuries.
  - All statutory benefits are limited.
    - No money for “pain and suffering”.
- No fault/Strict liability system
  - If an injury or illness occurs within what the legislature defines to be the course and scope of employment, it is compensable and benefits are provided regardless of “fault”.

# Workers' Compensation Benefits.

- Legislature identifies what is compensable:
  - Causation for all workers other than firefighters = workers burden to prove material or major causation.
  - Causations for firefighters = presumption of work relatedness for identified/limited conditions. Employers burden to prove not work related.
- Legislature sets the benefit amount to which an injured worker is entitled:
  - Lost wages (Tax free);
  - Related medical bills;
  - Resulting permanent disability;
  - Death & survivor benefits.
  - Supplemental (2<sup>nd</sup> job) Disability



# Firefighters' Presumption

- What is the “Firefighters’ Presumption”?
  - In Oregon, the legislature created ORS 656.802(4) and (5) providing that certain medical conditions are presumed to be compensably work related as occupational diseases when experienced by firefighters if certain prerequisites are met.

# Why Have a Firefighter's Presumption?

- **Public Policy Considerations.**
  - Proposition I : Firefighters are uniquely exposed to hazards in the workplace which can cause health issues over time.
  - Proposition II : Difficult for firefighters to prove causation given the number of instances of exposure, the unidentified materials encountered, the time between exposures and onset of symptoms.
  - Proposition III : Science is split, but there is evidence of an association between firefighting activities and an increased risk of contracting certain medical conditions.
  - Proposition IV : Public supports showing appreciation of firefighters for their service through passage of work comp presumption laws.

# The Oregon Firefighter Presumption – Sub-Section (4) (1960's law)

- ORS 656.802(4)
  - (4) Death, disability or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an "occupational disease." Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter's employment. However, any such firefighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter's employment.

# Limitations to Presumption Statute Subsection (4)

- At least 5 years of firefighting experience;
- Qualifying medical examination which did not produce evidence of the condition.
  - Examination must be of the type that would reveal any evidence of any condition covered under the presumption for which a claimant later seeks compensation.
  - Exam does not have to be conducted at the Department's request.
  - Department is not required to pay for qualifying exams.
- Employer can defeat presumption by proving firefighting exposure was unrelated to causation of covered condition.

# The Oregon Firefighters' Presumption – Subsection (5) (2009 law)

- ORS 656.802(5)

(a) Death, disability or impairment of health of a nonvolunteer firefighter employed by a political division or subdivision who has completed five or more years of employment as a nonvolunteer firefighter is an occupational disease if the death, disability or impairment of health:

- (A) Is caused by brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer, multiple myeloma, non-Hodgkin's lymphoma, cancer of the throat or mouth, rectal cancer, breast cancer or leukemia;
- (B) Results from the firefighter's employment as a nonvolunteer firefighter; and
- (C) Is first diagnosed by a physician after July 1, 2009.

# Limitations to Presumption Statute: Subsection (5)

- ◆ 5 year of service requirement.
- ◆ §5 cancer presumption only applies to paid firefighters, not volunteers.
- ◆ §5 must be diagnosed after July 1, 2009.
- ◆ §5 prostate cancer does not apply if diagnosed after firefighter reaches the age of 55.
- ◆ §5 diagnosis must not come more than 85 months following the termination of employment.
- ◆ Tobacco use may be clear and convincing evidence sufficient to overcome the presumption in some circumstances.
- ◆ Employer can defeat presumption through showing the condition was not caused in material part by firefighting exposures.

# What Conditions are Included?

- 656.802(4)
  - Conditions of the lungs or respiratory tract;
    - Lung cancer, emphysema, chronic bronchitis, etc.
  - Hypertension;
  - Cardiovascular-renal disease;
    - May include heart attacks, strokes, kidney damage, etc.

# What Conditions are Included?

- ORS 656.802(5) -- 12 types of Cancer

Brain cancer;

Stomach cancer;

Multiple myeloma;

Throat cancer;

Rectal cancer;

Leukemia

Pre-age 55 prostate cancer

Colon cancer

Testicular cancer

Non-Hodgkin's lymphoma;

Mouth cancer;

Breast cancer;



# Who Qualifies for the Presumption?

- §(4)
  - Any firefighter may qualify
- §(5)
  - Only paid (non-volunteer) firefighters may qualify.

# What is a “Non-volunteer Firefighter” for Purposes of the Presumption?

- “non-volunteer firefighter” means a firefighter who performs firefighting services and receives salary, hourly wages equal to or greater than the state minimum wage, or other compensation except for room, board, lodging, housing, meals, stipends, reimbursement for expenses or nominal payments for time and travel, regardless of whether any such compensation is subject to federal, state or local taxation. “Nominal payments for time and travel” includes, but is not limited to, payments for on-call time or time spent responding to a call or similar non-cash benefits.

# If the Presumption Applies

- Claim is not *automatically* compensable.
- Presumption is rebuttable.
  - (4) Employer must show condition is unrelated to firefighting exposures.
  - (5) Employer must produce clear and convincing evidence the condition was not caused in material part by the firefighters work activities.

# If Presumption Does Not Apply

- Claim may still be compensable.
- Usual workers compensation standards apply.
- Worker has the burden of proving the injury or illness was caused by work activities.
- Just no presumption of compensability.

# Firefighter A

- Three days after fighting a chemical fire, Firefighter A presented to his physician complaining of headaches. An MRI revealed a tumor in the frontal lobe of his brain. After surgery, the tumor was found to be malignant and Firefighter A was diagnosed with brain cancer.
  - 42 years old;
  - Regularly employed, non-volunteer firefighter;
  - Began his career in 2004 as a volunteer firefighter before becoming a non-volunteer in 2008;
  - Had a pre-employment physical in 2008 which revealed no evidence of cancer;
- Does the presumption apply?
  - Why or why not?
- If the presumption doesn't apply, can the claim still be compensable?

# Firefighter B

- Firefighter B presented to his physician for treatment of chronic bronchitis. Further testing revealed Firefighter B also had lung cancer.
  - 33 years old;
  - Volunteer firefighter since 2005;
  - Had a yearly physical in 2009 which revealed no evidence of a serious condition;
  - Has been a pack per week smoker since the age of 18.
- Does the presumption apply?
  - Why or why not?

# Firefighter C

- Firefighter C is a retired Fire Chief. During a routine physical, Firefighter C was diagnosed with prostate cancer.
  - 65 years old;
  - Hired as a non-volunteer firefighter at the age of 25;
  - Had yearly physicals which did not show evidence of the condition
  - Retired at age 56 with full pension;
- Does the presumption apply?

# Firefighter D

- Firefighter D experiences trouble breathing one day while on duty in 2008. He presents to his primary care physician who diagnoses extreme hypertension. Further tests reveal Firefighter D has Stage IV renal failure and needs a kidney transplant which he receives in 2011.
  - 44 years of age;
  - Has been a non-volunteer firefighter since 1995;
  - Had a pre-employment physical which showed no signs of renal disease;
- Does the presumption apply?



# Trends since 2009 HB 2420

- SDAO Experience – SAIF Experience
- Nevada Example
- The Future

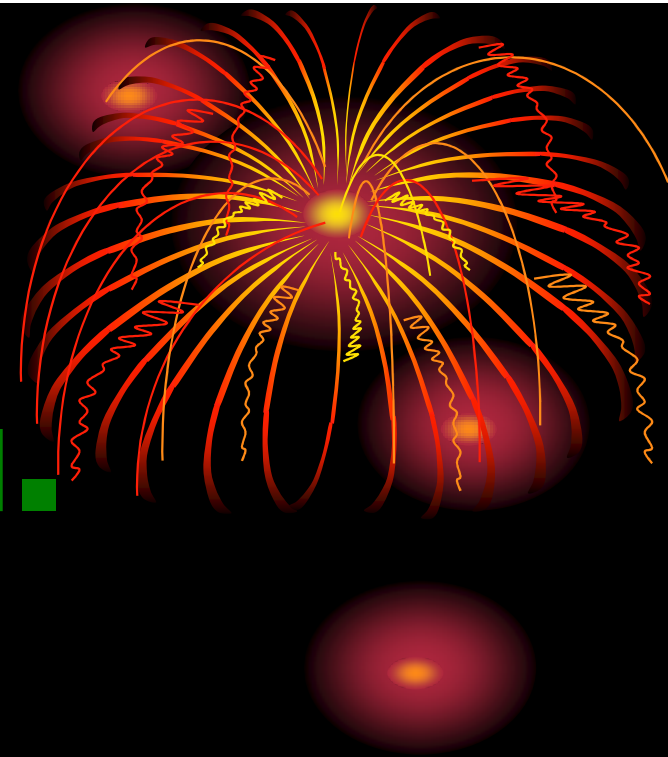
# Your Role as Management

- Make sure your staff is aware of what the Presumption does and does not do
- With a possible presumption claim, provide the relevant information to SDAO or your WC carrier so that a timely, complete and fair evaluation can be performed. Relevant information =
  - Documentation of firefighting employment for 5 or more years
  - Verification that job entailed firefighting, not just EMT or administrative duties
  - Available physical examination info prior to diagnosis of claimed condition
  - Available tobacco use information
  - If worker is retired from firefighting work, date of retirement

# How SDAO or your WC Carrier can help

- Ask Questions !!
- Communicate your concerns/needs as members and what you believe can be done to improve services provided.
- Help us understand the pressures you may be facing (short and long-term)

# **Thank You.**



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