

House Bill 2418

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Specifies certain presumptions as to cause of death, disability or impairment of health of fire service professional, public safety personnel or employee of public or private safety agency with duties related to firefighting, police, ambulance or emergency medical services in claim for benefits related to occupational disease under workers' compensation law.

A BILL FOR AN ACT

1
2 Relating to occupational diseases for purposes of workers' compensation for certain workers; creat-
3 ing new provisions; and amending ORS 656.802.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 656.802 is amended to read:

6 656.802. (1)(a) As used in this chapter, "occupational disease" means any disease or infection
7 arising out of and in the course of employment caused by substances or activities to which an em-
8 ployee is not ordinarily subjected or exposed other than during a period of regular actual employ-
9 ment therein, and which requires medical services or results in disability or death, including:

10 (A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with
11 dust, fumes, vapors, gases, radiation or other substances.

12 (B) Any mental disorder, whether sudden or gradual in onset, which requires medical services
13 or results in physical or mental disability or death.

14 (C) Any series of traumatic events or occurrences which requires medical services or results in
15 physical disability or death.

16 (b) As used in this chapter, "mental disorder" includes any physical disorder caused or worsened
17 by mental stress.

18 (2)(a) The worker must prove that employment conditions were the major contributing cause of
19 the disease.

20 (b) If the occupational disease claim is based on the worsening of a preexisting disease or con-
21 dition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the
22 major contributing cause of the combined condition and pathological worsening of the disease.

23 (c) Occupational diseases shall be subject to all of the same limitations and exclusions as acci-
24 dental injuries under ORS 656.005 (7).

25 (d) Existence of an occupational disease or worsening of a preexisting disease must be estab-
26 lished by medical evidence supported by objective findings.

27 (e) Preexisting conditions shall be deemed causes in determining major contributing cause under
28 this section.

29 (3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable
30 under this chapter unless the worker establishes all of the following:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) The employment conditions producing the mental disorder exist in a real and objective sense.

2 (b) The employment conditions producing the mental disorder are conditions other than condi-
 3 tions generally inherent in every working situation or reasonable disciplinary, corrective or job
 4 performance evaluation actions by the employer, or cessation of employment or employment deci-
 5 sions attendant upon ordinary business or financial cycles.

6 (c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the
 7 medical or psychological community.

8 (d) There is clear and convincing evidence that the mental disorder arose out of and in the
 9 course of employment.

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

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

23 (A) Is caused by brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer,
 24 multiple myeloma, non-Hodgkin's lymphoma, cancer of the throat or mouth, rectal cancer, breast
 25 cancer or leukemia;

26 (B) Results from the firefighter's employment as a nonvolunteer firefighter; and

27 (C) Is first diagnosed by a physician after July 1, 2009.

28 (b) Any condition or impairment of health arising under this subsection is presumed to result
 29 from the firefighter's employment. Denial of a claim for any condition or impairment of health aris-
 30 ing under this subsection must be on the basis of clear and convincing medical evidence that the
 31 condition or impairment was not caused or contributed to in material part by the firefighter's em-
 32 ployment.

33 (c) Notwithstanding paragraph (b) of this subsection, the presumption established under para-
 34 graph (b) of this subsection may be rebutted by clear and convincing evidence that the use of to-
 35 bacco by the nonvolunteer firefighter is the major contributing cause of the cancer.

36 (d) The presumption established under paragraph (b) of this subsection does not apply to pro-
 37 state cancer if the cancer is first diagnosed by a physician after the firefighter has reached the age
 38 of 55. However, nothing in this paragraph affects the right of a firefighter to establish the
 39 compensability of prostate cancer without benefit of the presumption.

40 (e) The presumption established under paragraph (b) of this subsection does not apply to claims
 41 filed more than 84 months following the termination of the nonvolunteer firefighter's employment
 42 as a nonvolunteer firefighter. However, nothing in this paragraph affects the right of a firefighter
 43 to establish the compensability of the cancer without benefit of the presumption.

44 (f) The presumption established under paragraph (b) of this subsection does not apply to volun-
 45 teer firefighters.

1 (g) Nothing in this subsection affects the provisions of subsection (4) of this section.

2 (h) For purposes of this subsection, “nonvolunteer firefighter” means a firefighter who performs
 3 firefighting services and receives salary, hourly wages equal to or greater than the state minimum
 4 wage, or other compensation except for room, board, lodging, housing, meals, stipends, reimburse-
 5 ment for expenses or nominal payments for time and travel, regardless of whether any such com-
 6 pensation is subject to federal, state or local taxation. “Nominal payments for time and travel”
 7 includes, but is not limited to, payments for on-call time or time spent responding to a call or similar
 8 noncash benefits.

9 (6) Notwithstanding ORS 656.027 (6), any city providing a disability and retirement system by
 10 ordinance or charter for firefighters and police officers not subject to this chapter shall apply the
 11 presumptions established under subsection (5) of this section when processing claims for firefighters
 12 covered by the system.

13 **(7)(a) As used in this subsection:**

14 **(A) “Fire service professional” has the meaning given that term in ORS 181A.355.**

15 **(B) “Public or private safety agency” has the meaning given that term in ORS 181A.355.**

16 **(C) “Public safety personnel” has the meaning given that term in ORS 181A.355.**

17 **(b) Notwithstanding subsections (2) and (3) of this section, death, disability or impairment**
 18 **of health of a fire service professional, of public safety personnel or of an employee of a**
 19 **public or private safety agency with job duties related to firefighting, police, ambulance or**
 20 **emergency medical services, is a compensable occupational disease if:**

21 **(A) The death, disability or impairment of health is caused by a mental or emotional**
 22 **trauma or a stress-related disorder that is generally recognized in the medical or psycho-**
 23 **logical community;**

24 **(B) The employment conditions that produce the mental or emotional trauma or stress-**
 25 **related disorder exist in a real and objective sense and arise out of performing duties as a**
 26 **fire service professional, as public safety personnel or as an employee of a public or private**
 27 **safety agency with duties related to firefighting, police, ambulance or emergency medical**
 28 **services; and**

29 **(C) The employment conditions that produce the mental or emotional trauma or stress-**
 30 **related disorder are not conditions generally inherent in every working situation, are not**
 31 **reasonable disciplinary, corrective or job performance evaluation actions by the employer**
 32 **and are not employment decisions, including a decision to cease employment, attendant upon**
 33 **ordinary business or financial cycles.**

34 **(c) For the purposes of this subsection:**

35 **(A) Death, disability or impairment of health shall be presumed to result from perform-**
 36 **ing duties as a fire service professional, as public safety personnel or as an employee of a**
 37 **public or private safety agency with duties related to firefighting, police, ambulance or**
 38 **emergency medical services;**

39 **(B) A denial of a claim for compensation for death, disability or impairment of health**
 40 **must be on the basis of clear and convincing medical evidence that the cause of the death,**
 41 **disability or impairment of health is unrelated to performing duties as a fire service profes-**
 42 **sional, as public safety personnel or as an employee of a public or private safety agency with**
 43 **duties related to firefighting, police, ambulance or emergency medical services; and**

44 **(C) The presumption described in subparagraph (A) of this paragraph may be rebutted**
 45 **only by clear and convincing medical evidence that the cause of the death, disability or**

1 **impairment of health is unrelated to performing duties as a fire service professional, as**
2 **public safety personnel or as an employee of a public or private safety agency with duties**
3 **related to firefighting, police, ambulance or emergency medical services.**

4 **(d) Notwithstanding ORS 656.027 (6), a city that provides a disability or retirement system**
5 **for firefighters and police officers by ordinance or charter that is not subject to this chapter,**
6 **when accepting and processing claims for death, disability or impairment of health from**
7 **firefighters and police officers covered by the disability or retirement system, shall apply:**

8 **(A) The presumptions set forth in this subsection; and**

9 **(B) The time limitations for filing claims that are set forth in ORS 656.807.**

10 **SECTION 2. The amendments to ORS 656.802 by section 1 of this 2019 Act apply to all**
11 **claims for benefits that occur or are pending on or after the effective date of this 2019 Act.**

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