

Firefighter Cancer Presumption:

Over the last decade, the MEL has consistently opposed bills that provide workers' compensation to current and former fighters (both volunteer and career) diagnosed with cancer because these bills will place the burden on the municipality to prove that the cancer was not caused by a fire service exposure. These bills require the Workers' Compensation Board to presume that a cancer is service related for fire fighters with as little as one day's service even if the cancer is diagnosed 30 years or more after the fire fighter retires.

Medical science does not support this presumption. In fact, fire fighters do not suffer cancer at a rate significantly different than the general population. When a similar bill was proposed in Michigan, the Governor assigned Michigan's Environmental Science Board to investigate the issue. The Board determined that:

“It is important to recognize that the majority of the evaluated studies found no elevated risk of cancer among fire fighters.”

The Michigan report further stated that:

“For brain cancer, fire fighters with longer years of exposure appear to have some elevated risk. Similarly, there is some evidence of increased risk of stomach cancer among fire fighters with 30 years plus of exposure. These results must be considered in the context of the small number of cases upon which these observations were made. For lung cancer, skin cancer, and leukemias and lymphomas, the weight of evidence of each of these sites indicates no elevated risk.”

The MEL's actuary estimates that if every eligible fire fighter with cancer makes a claim, the cost to municipal budgets will be \$300 million per year: 600 cases annually at a cost of \$500,000 per case. Of course, not every eligible fire fighter will make a claim. However, if this legislation is adopted, it is reasonable to expect legal firms to extensively encourage former firefighter with cancer to file claims. Even if only 20% of the eligible fire fighters with cancer file for benefits, the cost will run \$60 million annually.

The MEL has consistently stated its willingness to sit down with any party to work for a balanced solution. Much can be learned from the experience of other states. For example, the first state to address this issue was Massachusetts. While even the Massachusetts bill will prove expensive, it is substantially more reasonable than the bills introduced so far in New Jersey.

- 1) In Massachusetts, the presumption that a cancer was caused by a fire service exposure is limited to those situations where fire fighters really have a higher risk than the general population. Specifically, the presumption is limited to fire fighters with a minimum of 5 years service and the cancer must be diagnosed within five years of leaving the service.

- 2) The Massachusetts statute also clarifies the grounds to deny a claim. For example, a fire fighter who smokes is not able to claim a presumption for lung cancer. Further, claims can be denied if the municipality shows by a preponderance of evidence that non-service connected risk factors or non-service connected accidents or hazards, or any combination thereof, caused the disability.
- 3) Any fire fighter's cancer compensation should be outside of the workers' compensation system. Massachusetts uses the state pension disability system rather than the workers' compensation system. Arizona established a special fire fighters' cancer fund. The problem with worker's compensation is that much of the money will be used to pay medical bills that are currently being paid by Medicare and health insurance. Therefore, if the benefits are paid through workers' compensation, municipal budgets will subsidize the federal government and health insurers by millions each year. The only way to avoid this problem is to follow the example of Massachusetts and Arizona by compensating fire fighters through some mechanism other than workers' compensation.

To reiterate, the MEL is willing to sit down and work out a balanced solution that is fair both to fire fighters and taxpayers. However, this legislation as currently written will cost the taxpayers tens of millions each year for claims that have no connection to in-service exposures.