

LEGISLATIVE RESEARCH SERVICES

31st Alaska Legislature
LRS Report 19.205
March 29, 2019



(907) 465-3991
research@akleg.gov

Firefighter Cancer Claims and Related Costs to Municipalities

Timothy Lash, Legislative Analyst

What are examples of the costs to municipalities of firefighter cancer claims?

Nationwide, a growing body of legislation, lawsuits, and research has been focused on work-related cancers among firefighters.¹ To protect firefighters who are diagnosed with specific types of cancer or other diseases, Alaska and 41 other states have enacted presumptive coverage laws.² According to one legal analyst, “Alaska has perhaps the most straightforward presumption provision,” establishing the presumption, under AS 23.30.121, that a firefighter’s claim for compensation may be valid unless there is a preponderance of evidence to contrary.³ That statute codifies presumptive coverage for certain cancers, respiratory disease, or cardiovascular events experienced within 72 hours of exposure.⁴

Alaska is similar to most states in establishing presumptive coverage as an element of workers’ compensation, rather than through a separate program.⁵ Firefighters in the state—including volunteer firefighters for local fire departments—are covered under the Alaska Workers’ Compensation Act.⁶

¹ For the purpose of this report, we consulted national, state, and municipal sources to obtain information related to the issue of firefighter cancer claims and related costs to governmental entities.

² Lauren Bavis, “Laws Intended To Protect Firefighters Who Get Cancer Often Lack Teeth,” *NPR*, January 4, 2019, www.npr.org/sections/health-shots/2019/01/04/660701244/laws-intended-to-protect-firefighters-who-get-cancer-often-lack-teeth.

³ Thomas A. Robinson, J.D., “The Role of Presumptions Within the Workers’ Compensation Arena,” *LexisNexis Legal NewsRoom*, 2014, www.lexisnexis.com/legalnewsroom/workers-compensation/b/recent-cases-news-trends-developments/posts/the-role-of-presumptions-within-the-workers-compensation-arena.

⁴ House Bill 84, currently before the Alaska State Legislature, would add breast cancer to the list of diseases presumptively covered under AS 23.30.121. It is accessible at www.akleg.gov/basis/Bill/Detail/31?Root=hb84. Also noteworthy is previous testimony from 2007 on the subject of disease presumption in Alaska, accessible at: www.legis.state.ak.us/basis/Meeting/Detail/?Meeting=SL%26C%202007-04-12%2013:30:00&Bill=SB%20117; and www.legis.state.ak.us/basis/Meeting/Detail/?Meeting=HL%26C%202007-04-27%2015:10&Bill=HB%20200.

⁵ Alaska is one of 33 states that provides presumptive coverage through worker’s compensation, according to the National Conference of State Legislatures (NCSL), as compared to those that provide presumptive coverage through another program, such as a dedicated fund. “Covering Those Who Risk All,” *State Legislatures Magazine*, NCSL, September/October 2018, www.ncsl.org/bookstore/state-legislatures-magazine/stateline-negative-political-ads-covering-firefighters-with-cancer-and-more.aspx.

⁶ AS 23.30.243; “Workers’ Compensation Requirements for Employer: Other Special Provisions Set Out in Statute,” Alaska Department of Labor and Workforce Development, labor.alaska.gov/wc/er-profit.html.

The enactment of presumptive coverage laws in Alaska and elsewhere has driven municipalities, under pressure from insurers, to take out additional insurance or explore other risk management measures to mitigate financial exposure and to reduce the likelihood or potential expense of paying out-of-pocket for a firefighter's presumptive claim against a municipality.

As outlined below, various sources acknowledge the difficulty of estimating the various costs of firefighter cancer claims, as well as the difficulty of managing financial risk related to such claims.

Cost Estimates

According to the Connecticut General Assembly Office of Legislative Research, "it does not appear that any studies have been able to conclusively estimate the cost of providing cancer presumption benefits to firefighters."⁷ The increased chance of firefighters being diagnosed with cancer is nine percent higher than the general population, as cited in an actuarial study commissioned for New Jersey in 2018. The average medical costs per firefighter cancer case were \$100,900 in that study, and the average indemnity award (i.e., the amount of compensation paid) to a firefighter for work-related cancer was \$300,000. The other costs identified at that time were legal fees, but such fees were not disaggregated by claim in that actuarial study—nor in any other studies that we found.⁸

According to a fiscal analysis by the Florida Senate for presumptive coverage legislation in 2017, worker's compensation costs for firefighters are characteristically "difficult to predict," with wide variance in frequency, severity, and cost estimates, due to "factors such as age, gender, type of treatment, and recovery period." In that analysis, the Florida Department of Financial Services estimated 58 months of treatment per cancer case—with average medical costs ranging from \$28,988 for testicular cancer to between \$126,000 and \$256,000 for multiple myeloma.⁹

Claims Coverage and Risk Management

In numerous states, including Alaska, insurance companies have reportedly begun to exit the market for coverage of workers' compensation for firefighter cancer claims, due in part to projected increases of such claims under presumptive coverage laws. The options, then, have been dwindling for self-insured

⁷ Lee Hansen, "Questions on Firefighter Cancer Presumption Laws," 2016, Connecticut General Assembly Office of Legislative Research, <https://www.cga.ct.gov/2016/rpt/2016-R-0018.htm>.

⁸ The Actuarial Advantage, Inc., "Actuarial Projections: Firefighter's Cancer Presumption S-716," March 20, 2018, njmel.org/wp-content/uploads/2018/03/2018-Actuarial-2.Cancer-Fire-Presumption.pdf.

⁹ "Senate Bill 158: Bill Analysis and Fiscal Impact Statement," Florida Senate Committee on Governmental Oversight and Accountability, January 23, 2017, www.flsenate.gov/Session/Bill/2017/158/Analyses/2017s00158.go.PDF.

municipalities to cover such claims by purchasing standard private insurance plans to cover workers' compensation for medical costs, disability payments, or other costs. Without adequate insurance to cover claims against a municipality, a catastrophic claim filed by a firefighter may require a self-insured municipality to pay out-of-pocket for any costs that exceed the municipality's insurance coverage.

To insure against out-of-pocket costs, a municipality may choose to purchase *excess workers' compensation insurance*—that is, a supplemental policy that ensures the municipality for workers' compensation claims that exceed a designated amount.¹⁰ Or, as an alternative to private insurance, some municipalities and other governmental entities may choose to join a *shared risk pool*, such as the Alaska Municipal League Joint Insurance Association.¹¹ As the industry publication *Insurance Journal* noted of Pennsylvania, "Unable to find cheaper, private insurance coverage, municipal leaders are opting into the State Workers' Insurance Fund or other organizations that work solely with municipalities to form a shared risk pool. But those plans are costly."¹²

The potential costs of a firefighter cancer claim to a municipality are both direct and indirect. Many or all of the costs may be covered by a municipality's medical insurance, standard workers' compensation (WC) insurance, excess WC insurance, or shared risk pool. A catastrophic claim filed by a firefighter against a municipality may bring steep costs that exceed the usual municipal expenses to cover employee benefits and mitigate financial risk. As the industry publication *Risk & Insurance* explains:

Firefighters and other first responders who may be covered by presumption of compensability laws make up a statistically insignificant portion of the overall workers' compensation market.

However, a major cancer claim expense could be fiscally damaging for a small municipality, said Brian Allen, vice president of governmental affairs for San Diego, Calif.-based Mitchell Pharmacy Solutions and a board officer for the American Association of Payers, Administrators and Networks.

¹⁰ For example, see "What Is Excess Workers' Compensation Insurance," February 16, 2017, PMC Insurance Group, pmcinsurance.com/what-is-excess-workers-compensation/.

¹¹ The Alaska Municipal League Joint Insurance Association may be visited at www.akml.org/community-services/insurance-pool/.

¹² Karen Shuey and *Sunday News*, "Firefighters Insurance Is Taxing Municipalities in Pennsylvania," *Insurance Journal*, April 15, 2013, www.insurancejournal.com/news/east/2013/04/15/288483.htm. For a broader perspective on the effects of presumptive coverage legislation in Pennsylvania, see Jenni Bergal, "Special Treatment for Firefighters With Cancer? Some States Say Yes," The Pew Charitable Trusts, December 7, 2015, www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/12/07/special-treatment-for-firefighters-with-cancer-some-states-say-yes. Also, for a state-by-state summary of laws, see "Presumptive Legislation for Firefighter Cancer," First Responder Center for Excellence, www.firstrespondercenter.org/cancer/toolsresources/presumptive-legislation-firefighter-cancer-state/.

Public safety employees represent less than 3 percent of the general working population, but if a firefighter or two goes out on disability because of a cancer presumption, it could increase a small city's claim costs by 20 to 25 percent, he said.¹³

To shed further light on the difficult and expensive choices faced by a municipality to mitigate its financial exposure, we corresponded with Jennifer Mannix, Risk Management Officer, City and Borough of Juneau, who provided the following perspective:

Our workers comp program would cover a firefighter claim as prescribed by Alaska Statutes.

As we discussed, thankfully, we have not had a firefighter claim related to cancer under our workers compensation program. While we know that this exposure is out there, we haven't had to deal with it directly.

Our workers compensation program is self-insured up to a \$1.25 million self-insured retention (SIR). We carry excess workers comp insurance for any one catastrophic claim above that SIR, for which we currently pay an approximately \$200,000 annual premium.

During our annual excess WC insurance policy renewal process, we have had one excess carrier propose lower insurance premiums (9% reduction proposed for FY18 renewal), if we were to accept a higher SIR specifically for firefighters. In fact, they won't offer coverage unless we agree to a minimum SIR of \$2 million for firefighters.

There is a limited number of workers compensation insurers for the public sector. So far, we have always had the option of keeping a \$1.25 million SIR for all of our employees, while still keeping our annual premium at a reasonable rate.¹⁴

¹³ Angela Childers, "Cancer Drugs a Growing Cost Driver in Workers' Comp," *Risk & Insurance*, November 1, 2017, riskandinsurance.com/cancer-drugs-growing-cost-driver-workers-comp/.

¹⁴ Ms. Mannix may be reached at Jennifer.Mannix@juneau.org or 907-586-0323.

Other Information

Several additional points may be of interest:

- According to KTUU in Anchorage, at least two Alaska firefighters—Andy Mullen (Anchorage) and Philip Rounds (Fairbanks area)—have died from cancer that reportedly resulted from “long-term exposure to toxic gases while in the line of duty.”¹⁵
- An unknown number of other firefighters in the state have received cancer diagnoses that may be work-related. Carol Bacon, a retired Anchorage firefighter, contracted a rare blood cancer that reportedly cost almost \$1 million for treatment.¹⁶ Ms. Bacon subsequently won a settlement against the Municipality of Anchorage, the terms of which were not public.¹⁷
- On March 19, 2019, the Anchorage Assembly voted unanimously to pass an ordinance that will prohibit certain consumer products containing flame retardant chemicals, in part to protect local firefighters from long-term exposure to such chemicals.¹⁸
- Statewide legislation on flame retardant chemicals, containing similar prohibitions and related policies, is under consideration in the Alaska State Legislature at this time.¹⁹

We also spoke with Kevin Smith, Executive Director, Alaska Municipal League Joint Insurance Association, who informed us that (a) most firefighters in the state already have employer-provided health care that covers cancer treatment; and (b) the Alaska Municipal League has not seen a serious financial issue as the result of a firefighter cancer claim to date. “There’s really not a lot of experience in Alaska with firefighter presumption claims,” he said.²⁰

We hope this is helpful. If you have questions or need additional information, please let us know.

¹⁵ Derek Minemyer, “Anchorage Assembly considers ban of potentially dangerous fire retardant chemicals,” *KTUU*, February 11, 2019, www.ktuu.com/content/news/Anchorage-Assembly-considers-ban-of-potentially-dangerous-fire-retardant-chemicals-505707211.html.

¹⁶ “Anchorage Assembly Approves Landmark Ban on Flame Retardants in Consumer Products,” *Anchorage Press*, March 20, 2019, www.anchoragepress.com/bulletin/anchorage-assembly-approves-landmark-ban-on-flame-retardants-in-consumer/article_da61823e-4b4a-11e9-b4fc-6b7c8083ba80.html.

¹⁷ Devin Kelly, “Familiar faces square off in Assembly race in West Anchorage,” *Anchorage Daily News*, September 28, 2016, www.adn.com/anchorage/article/west-anchorage-assembly-race-divides-experience-politics/2016/03/09/.

¹⁸ Anchorage Ordinance (AO) No. 2019-15, www.muni.org/PublicNotice/Pages/OrdinanceNoAO2019-1502122019.aspx.

¹⁹ House Bill 27, www.akleg.gov/basis/Bill/Detail/31?Root=HB%20%2027.

²⁰ Mr. Smith may be reached at kevins@amljia.org or 907-258-2625.