

New Jersey Firefighter Cancer Statute is Well Intentioned, But Based on Gut Feelings, Not Science

Firefighter unions have lobbied every state to enact legislation granting workers' compensation benefits to firefighters with cancer. A few states have resisted the pressure, but most have enacted some version of a presumption that firefighting causes some or all cancers. The reasons that states have enacted these provisions include pressure from organized labor; overall sympathy and love for firefighters and respect for the difficult and essential work they perform; and political considerations. Science is not generally a factor, and most statutes are based on myths, generalizations, unsubstantiated theories, and statistics warped out of context. The core issue of whether any cancers are ever related to any actual firefighting exposure is merely a passing consideration, largely because of union and media propaganda that creates the impression that causation is a foregone conclusion.

The New Jersey Senate passed S716 on June 7, 2018, by a vote of 29-4. The Bill has now been referred to the House, where most pundits predict that the House will also favor the Bill.

This Bill amends the Workers' Compensation Act to allow current and retired firefighters, including volunteers, to file for full workers' compensation benefits for ANY cancer. Because about one third of all Americans will be diagnosed with cancer at some point in life, this Bill opens the door to thousands of claims by current and former career and volunteer firefighters, regardless of the magnitude or extent of their exposures, and regardless of whether the cancer at issue has ever been definitively proven to be related to any firefighter exposures. The Bill is well intended, but based on distorted interpretations and myths, and is at once over and under inclusive. ‘

Firefighters perform difficult work under dangerous circumstances. They rightly deserve our respect and praise for their commitment to public safety. If we, as a society, want to give firefighters extra benefits, extra money, or extra retirement pay due to their service, we should do so without pretext. But instead, legislatures are trying to demonstrate their affinity for firefighters through a bizarre distortion of science and medicine and by legislatively determining the causes of certain cancers.

There are some proven causes of certain cancers. Cigarette smoking causes lung cancer. Asbestos causes mesothelioma. Sun exposure causes skin cancer. The HPV virus causes cervical cancer. But for most cancers, there is simply no known cause. Human brains are programmed to search for order, predictability, and patterns and we therefore conduct desperate and continuous searches for the causes of cancers. Many theories are proposed, investigated, and ultimately debunked. Hundreds of years of scientific inquiry by virtually every nation in the world have resulted in millions of published journal articles, but the reality is that for most cancers, we still don't know the cause.

But apparently state legislatures, unlike doctors and scientists, have mastered the art of determining, with great precision, the causes of certain cancers. In about 40 states, legislatures have voted and thereby decided that various lists of cancers are the result of exposures faced by firefighters.

The fact that virtually each state lists different cancers, different latency periods, and different exceptions is excellent evidence that collectively, the legislatures are merely demonstrating their support for firefighters, and not making any serious effort at evaluating the science of cancer causation. The New Jersey law fits this pattern.

The Bill does not, like most states, limit or list of types of cancers that can be compensated. In the most comprehensive study of cancer among firefighters by the National Institute of Occupational Safety and Health, NIOSH concluded that out of 50 types of cancer studied, firefighters had a lower incidence of cancer than the general public for 15 cancers; insufficient evidence to reach statistical significance for about 30 cancers, and for only 9 of the 50 cancers studied, a mild to moderate statistically significant increased risk (buccal cavity, tongue, larynx, lung, pharynx, colon, large intestine, esophagus, kidney). For only one cancer, the extremely rare disease of mesothelioma, did firefighters have twice the risk

of cancer than the general public.^[1] Overall, firefighters have about the same risk of dying of cancer as do

school teachers. A much higher percentage of firefighters die due to cirrhosis of the liver than die because of cancer.

The Bill does not consider the impact of cigarette smoking. Cigarette smoke contains more than 2000 chemicals, at least 60 of which are Group I (Known Carcinogens in Humans) as classified by the IARC. Some Group I carcinogens are ONLY found in cigarette smoke. For this reason, many states refuse to allow a presumption of causation for firefighters who smoke. The odds of a firefighter who never smoked getting lung cancer, compared to the general population, are about 1.1 to 1. The odds of a career smoker who never fought fires, compared to the general population, getting lung cancer are about 40 to 1.

Some commentators have speculated that the Bill will not cause an increase in litigated claims or in compensation payouts. Our firm's experience is that once news of the availability of nearly guaranteed benefits spreads, the floodgates will open to claims, especially by retirees. Claims and litigation expenses can soar, causing carriers to stop writing coverage for fire departments or dramatic increases in premiums charged. In some states, volunteer companies have been forced to close due to sharp increases in costs of compensation insurance and the severe limitation of companies willing to continue to write such coverage.

There have been hundreds of studies performed on the issue of firefighting exposures and whether they are linked to any particular cancers. The IARC is the agency relied upon by the legislature for determination of what constitutes a "known" carcinogen. But for many known carcinogens, the substance is known to cause only certain specific types of cancer. For example, sunlight, otherwise known as ultraviolet radiation, (a Group I Known Carcinogen) causes skin cancer, but is not related to rectal cancer. Under the statute as written, a New Jersey volunteer firefighter who was out in the sunshine at a fire scene, even for one day, could claim that his rectal cancer is related to this "known carcinogen" and receive hundreds of thousands of dollars in benefits.

The National Institute of Occupational Safety and Health issued Monograph 98 after years of exhaustive investigation, and concluded that there was insufficient evidence to deem firefighting a known cause of cancer. Other professions, such as painting, were accepted by NIOSH as professions that cause certain cancers. But painters, who are proven to be, as an industry, at increased risk of cancer, have no presumption of compensability.

Although there is some evidence that firefighters get certain cancers more frequently than the general public, such minor increased risks may have nothing at all to do with their jobs. Firefighters may share other socio-economic traits that are more closely linked to cancer, such as tobacco usage, alcohol consumption, diets high in fat, living in more urbanized areas, and higher incidence of prior service in the military. It is not at all uncommon for firefighters with cancer to already be receiving VA benefits for presumptively service related cancers.

The whole concept of a legislature determining the cause of specific cancers is bizarre. Thousands of scientists and billions of dollars have been spent searching for cancer causes for at least 100 years, but for most cancers, there is still no known cause. It is fascinating that legislatures have no difficulty fingering the cause of specific cancers when so many scientists and doctors have been unable to do so.

It is very significant that about 38 states have enacted firefighter cancer presumption statutes, but more significant that they each differ in their assessments of what cancers are caused by firefighting and what factors other than firefighting must be considered.

In some states, all cancers are presumably firefighting related. In some states, only a select list of 5 to 12 cancers make the cut. There is no consistency among the states as to which cancers to include, precisely because the list is the result of lobbyist input and political compromise rather than scientific evidence supporting causation.

In some states, only workers under 65 or 70 or some other arbitrary age qualify for the presumption. Many cancers have long latency periods, and will not even show up until decades after retirement. Others, such as prostate cancer, are clearly age related. Arbitrary age limits are also the result of lobbyist input and political compromise rather than scientific evidence supporting causation.

In some states, the cause of the cancer must be a known human carcinogen, usually a Group I carcinogen as determined by the IARC. In other states, no specific carcinogen needs to be identified.

In some states, there must be a scientific link between the type of cancer and the type of exposure. In other states, any exposure to any carcinogen counts, even if that carcinogen has no association with the cancer in question.

States also differ as to how long after retirement a claim can be made; how many years of service are needed to qualify for the presumption; what type of evidence is needed to rebut the presumption; and with regard to limitations, if any, on the amount of benefits that can be paid. States vary on whether volunteer firefighters are

also eligible for the presumption, and if so, how many years of service or fire calls are needed to qualify.

The remarkable lack of consensus as to what carcinogens to include, what cancers to include, how much latency is acknowledged, how much exposure is necessary and whether confounding factors such as smoking should be considered is testament to the fact that firefighter presumption statutes are based on inherent sympathy for firefighters and politics, not science. In some states, cancer benefits are funded by the state as a whole, or through special tax assessments, and in such cases, awarding a cancer benefit to all firefighters may be an acceptable perk offered to attract and retain firefighters to public service. But in other states, the increase costs of paying firefighters for cancers that are unrelated to their jobs are imposed on individual fire companies, towns and municipalities, and this is inherently unfair when the employer alone bears the costs of paying for cancers that are unrelated to employment.

The New Jersey Bill includes this curious definition:

“‘Known’ carcinogen means a substance which may cause cancer, including any substance identified as a carcinogen by the State Department of Health or by the International Agency for Research on Cancer.” “A carcinogen” could be read to include both known and suspected carcinogens. “Which MAY cause cancer” underscores the argument that the legislature meant to include suspected carcinogens in the definition of “known” carcinogens. The list of potentially carcinogenic substances is lengthy, and includes everything from grilled meat to Asian pickled vegetables. Under the New Jersey law as written, if a volunteer firefighter goes on one call, and the call involves an outdoor grill fire with meat on the grates, and then develops brain cancer, he would be covered by the presumption and entitled to a huge amount of compensation, because he would meet the requirement of exposure to a “known” carcinogen at a fire.

[\[1\]](#) See Supplementary data for Mortality and Cancer Incidence in a Pooled Cohort of U.S. Firefighters from San Francisco, Chicago and Philadelphia. Note that these results were obtained based on a massive study of career firefighters in highly urbanized areas.