

**New York's Volunteer Firefighter Cancer Benefit Bill Is Better Than Most
But Still Based on Erroneous Assumptions**

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The New York Legislature passed the “New York State Volunteer Firefighter Enhanced Cancer Disability Benefits Act” on June 20, 2017. This new law enables up to 250,000 current and former NY state volunteer firefighters to collect both lump-sum awards and monthly disability benefits for certain specified cancers.

Most states now have laws authorizing benefits to both career and volunteer firefighters but, usually, these laws fall under workers’ compensation programs and require that the cancer be related to firefighting. Most such laws establish a presumption that some or all cancers are work related but offer the fire company an opportunity to rebut the presumption of causation by showing an alternative cause for the cancer. Some states prohibit cancer claims by smokers or impose age limits on eligibility. The NY law is unique in that there is apparently no requirement that the firefighter’s cancer be in any way related to firefighting. There are also no exceptions for age or smoking history, and there is apparently no way for the fire company to challenge a claim.

Most cancers are age related, related to cigarette smoking or to lifestyle, genetic, or other non-occupational factors. Over 80% of lung cancers are caused by smoking, and nearly every elderly man will develop prostate cancer if he lives long enough to do so. Under the NY law, a volunteer firefighter with a 40-year history of smoking 2 packs a day and a family history of cancer would automatically be entitled to benefits, as would an 80-year-old man with a family history of prostate cancer.

The intent of the new law is to provide a supplemental “perk” to encourage people to become volunteer firefighters. Volunteer departments save the state billions of dollars in payroll costs and promoting volunteerism for firefighting is a huge public benefit. In exchange for their service, the state has in essence granted them a benefit as a token of appreciation for service rather than due to an alleged connection between firefighting and cancer.

This is evident from the fact that lung cancer is not compensable under the new law despite the significant potential that firefighters will inhale carcinogens on the job, and prostate cancer is on the list of compensable cancers despite the lack of scientific evidence suggesting that prostate cancer is ever related to firefighting.

Unlike firefighter cancer presumption laws in other states, this new NY law does not even pretend to be evidence based and does not purport to have any basis in epidemiology. It is simply a fringe benefit that pays out for certain cancers even if the cancers are not work related. It is similar in many ways to supplemental cancer insurance programs offered by many types of employers.



Because the law makes no reference to the work relatedness of any condition, it is difficult to understand why the list of cancers eligible for compensation is limited. This aspect of the law may be a residual from prior ideas to compensate volunteers for only those cancers that could, theoretically, be related to firefighting.

It is absurd that legislatures around the country have been asked to specify the causes of various cancers, when for most cancers, despite the efforts of millions of scientists and the expenditure of billions of dollars, no one knows why most cancers occur. Reputable international agencies such as the IARC, that have extensively and specifically studied cancer among firefighters, have refused to classify firefighting as a known cause of most cancers. Yet, public and political pressure, as opposed to science, seems to be the primary driver of legislation.

NY's new law imposes a burden on fire companies and municipalities, most of which are hard pressed to adequately fund the extreme costs of up-to-date firefighting equipment, training and technologies, to pay for cancers among volunteers even when their cancers are completely unrelated to firefighting. But at least in NY, unlike other states, benefits are limited to either a lump-sum payment of \$6,250 or \$25,000 (depending on the severity of and treatment rendered for the cancer), plus up to \$1,500 per month for 36 months if the firefighter is disabled by the cancer. There is also a \$50,000 lump-sum payment for cancer-related death. These benefits are modest compared to benefits under workers' compensation statutes, which often allow up to \$50,000 a year for the life of the firefighter, followed by up to \$50,000 per year for the life of a surviving spouse. More importantly, the NY law does not provide for any payments for medical expenses for cancer treatment, which often exceed \$1 million per case.

The NY law is, therefore, a well-intentioned compromise. Benefits and eligibility are limited, but the law dispenses with the requirement that the cancer be related to firefighting. Assuming that the governor signs the bill into law, it becomes effective in 2019. In the interim, fire companies are expected to obtain cancer insurance policies to meet the new financial exposures and to fund them at their own costs.

Here is a link to a full version of the bill:

http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A00711&term=2017&Text=Y

Chartwell Law is a national leader in the defense of occupational cancer claims by firefighters and others. Our attorneys have litigated hundreds of such cases and serve as consultants to legislatures and municipal organizations in several states. Chartwell regularly defends workers' compensation, Heart & Lung, and toxic tort cases in NY, NJ, PA, MA, CT, RI, NH, WV, TN, OH and FL.

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