



Ohio Legislative Service Commission

Bill Analysis

Meredith L. Rockwell

S.B. 94

128th General Assembly
(As Introduced)

Sens. Patton, Stewart, Schaffer, Hughes, D. Miller

BILL SUMMARY

- Specifies that a firefighter, police officer, or emergency medical services worker who is disabled as a result of specified types of cancer or diseases is presumed for purposes of Ohio's Workers' Compensation Law to have incurred the disease while performing official duties as a firefighter, police officer, or emergency medical services worker.
- Specifies that a member of the Ohio Police and Fire Pension Fund (OP&F) who is a member of a police department or fire department and is disabled as a result of specified types of cancer or diseases is presumed for purposes of the law governing OP&F to have incurred the disease while performing the member's official duties.
- Specifies that, for purposes of the law governing OP&F, the presumption described in the immediately preceding dot point applies if the disease or any evidence of the disease was not revealed by the physical examination passed by the OP&F member on entry into the fire department.
- Specifies that for the purposes of the Workers' Compensation Law, the presumption created in the bill may be refuted by affirmative evidence and that, for the purposes of the law governing OP&F, the presumption created in the bill may be refuted by competent evidence.

CONTENT AND OPERATION

Background

Disability benefits under the law governing the Police and Fire Pension Fund

Under the law governing the Ohio Police and Fire Pension Fund (OP&F; R.C. Chapter 742.), a member of OP&F (OP&F member)¹ who is permanently and totally disabled² as the result of the performance of the member's official duties as a member of a police or fire department is paid annual disability benefits in accordance with the requirements specified in continuing law for permanent and total disability benefit payments. If an OP&F member is partially disabled as the result of the performance of the member's official duties as a member of a police or fire department, and the disability prevents the member from performing those duties and impairs the member's earning capacity, the member receives annual disability benefits in accordance with the requirements specified in continuing law for partial disability benefit payments. (Secs. 742.38 and 742.39, not in the bill.)

Continuing law requires the Board of Trustees of the Police and Fire Pension Fund to determine whether an OP&F member is permanently and totally disabled or partially disabled by using the objective criteria the Board specifies in rules the Board adopts that are applicable to the determination. Under continuing law unchanged by the bill, an OP&F member who is disabled as a result of heart disease or any cardiovascular or respiratory disease of a chronic nature, which disease or any evidence of which disease was not revealed by the physical examination passed by the member on entry into the department, is presumed to have incurred the disease while performing the member's official duties, unless the contrary is shown by competent evidence. (Sec. 742.38(C) and (D).)

¹ A member of the OP&F is any person, except as otherwise provided in the law governing OP&F, who is contributing a percentage of the person's annual salary to OP&F or who is receiving a disability benefit or pension from OP&F as a result of service in a police or fire department. A person, other than an other system retirant, who is contributing a percentage of the person's annual salary to OP&F and is dismissed, resigns, or is granted a leave of absence from a police or fire department must be considered a "member of the fund" for a period of 12 months after the first day of the dismissal, resignation, or leave of absence, provided the sum deducted from the person's salary and credited to the person's account in the fund remains on deposit in OP&F. (Sec. 742.01, not in the bill.)

² Under continuing law, "totally disabled" means a member of the fund is unable to perform the duties of any gainful occupation for which the member is reasonably fitted by training, experience, and accomplishments. Absolute helplessness is not a prerequisite of being totally disabled. Continuing law defines "permanently disabled" as a condition of disability from which there is no present indication of recovery. (Sec. 742.38(D)(1)(a) and (b).)

Compensation and benefits for occupational diseases under Ohio's Workers' Compensation Law

Under the Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.), every employee who is disabled because of the contraction of an occupational disease or the dependent of an employee whose death is caused by an occupational disease, is entitled to the compensation provided under that law, subject to the certain modifications relating specifically to occupational diseases (sec. 4123.68). An "occupational disease" is a disease contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard that distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general (sec. 4123.01(F), not in the bill). Continuing law specifies a "schedule" of occupational diseases that are compensable as such when contracted by an employee in the course of the employment in which the employee was engaged and due to the nature of the process described in the schedule. (Sec. 4123.68.)

Presumption that specified diseases are contracted while performing official duties

The bill states that, for purposes of the law governing OP&F, an OP&F member who is a member of a police department or who is a member of a fire department³ who has been assigned to at least three years of hazard duty as a member of a fire department, and is disabled as a result of any of the following types of cancer or disease, is presumed to have incurred the cancer or disease while performing the member's official duties:

- (1) Cancer of the lung, brain, kidney, bladder, rectum, stomach, skin, or prostate;
- (2) Non-Hodgkins lymphoma;
- (3) Leukemia;
- (4) Multiple myeloma;
- (5) Testicular or colorectal cancer;

³ Under continuing law, a member of a fire department, for purposes of the law governing OP&F, means (1) any person who commences employment after November 8, 1990, as a full-time firefighter with a fire department, in a position in which the person is required to satisfactorily complete or have satisfactorily completed an approved firefighter training course, (2) any person who has elected pursuant to the law governing OP&F to be transferred from the Public Employees Retirement System to OP&F, or (3) any full-time firefighter who, on November 8, 1990, is an OP&F member. (Sec. 742.01, not in the bill.)

(6) A contagious or infectious disease specified in rules adopted by the Public Health Council.

The presumption does not apply if competent evidence to the contrary of the presumption is shown or if the cancer or disease that resulted in a member's disability, or any evidence of that cancer or disease, was revealed by the physical examination passed by the member on entry into the department. The bill specifies that its provisions apply to an application for a disability benefit under the law governing OP&F that is filed on or after the bill's effective date. (Sec. 742.38(D)(3)(b) and Section 3.)

Similarly, in the schedule of diseases specified in the Workers' Compensation Law, the bill states that any of the following types of cancer or disease contracted by a firefighter, police officer, or public emergency medical services worker who, in the case of a firefighter or public emergency medical services worker, has been assigned at least three years of hazard duty as a firefighter or public emergency medical services worker, constitutes a presumption, which may be refuted by affirmative evidence, that the cancer or disease was contracted in the course of and arising out of the firefighter's, police officer's, or public emergency medical services worker's employment:

- (1) Cancer of the lung, brain, kidney, bladder, rectum, stomach, skin, or prostate;
- (2) Non-Hodgkins lymphoma;
- (3) Leukemia;
- (4) Multiple myeloma;
- (5) Testicular or colorectal cancer;

(6) A contagious or infectious disease specified in rules adopted by the Public Health Council.

The bill defines "emergency medical services worker," for purposes of the Workers' Compensation Law, as a person who holds a current valid certificate issued under Division of Emergency Medical Services Law (R.C. Chapter 4765.) and is a member of a public retirement system. Continuing law defines "firefighter" as "any regular member of a lawfully constituted fire department of a municipal corporation or township, whether paid or volunteer." (Sec. 4123.68(W) and (X).)

Under continuing law unchanged by the bill, the Public Health Council must adopt rules in accordance with the Administrative Procedure Act to specify the diseases that are reasonably likely to be transmitted by air or blood during the normal course of

duties performed by an emergency medical services worker or funeral services worker (sec. 3701.248(F), not in the bill). In a rule, the Council currently has classified the following diseases as reasonably likely to be transmitted by air or blood during the normal course of an emergency medical worker's duties:

- (1) Crimean-Congo hemorrhagic fever;
- (2) Diphtheria;
- (3) Ebola-marburg virus infection;
- (4) Fifth disease (human parvovirus infection);
- (5) Hansen's disease (leprosy);
- (6) Acute or chronic infection with hepatitis B virus;
- (7) Acute or chronic infection with hepatitis C virus;
- (8) Infection with delta hepatitis virus;
- (9) Human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS) and AIDS-related illnesses;
- (10) Infection with human t-lymphotropic virus (HTLV-1 and HTLV-2);
- (11) Lassa fever;
- (12) Leishmaniasis, visceral (Kala-Azar);
- (13) Leptospirosis;
- (14) Listeriosis pneumonia;
- (15) Measles (rubeola);
- (16) Meningococcal infection (neisseria meningitidis);
- (17) Mumps (infectious parotitis);
- (18) Pertussis (whooping cough);
- (19) Pneumonic plague (yersinia pestis);
- (20) Rabies;

(21) Rubella (German measles);

(22) Tuberculosis;

(23) Varicella (herpes zoster) infection, including chicken-pox, disseminated varicella, varicella pneumonia, and shingles. (O.A.C. 3701-3-02.2.)

HISTORY

ACTION

DATE

Introduced

04-07-09

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