

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 930

Short Title: Workers' Comp/Firefighter Occupat'l Diseases. (Public)

Sponsors: Senators Berger of Franklin; and Stein.

Referred to: Judiciary II.

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE A PRESUMPTION THAT CERTAIN INFECTIOUS DISEASES, RESPIRATORY DISEASE, HYPERTENSION, HEART DISEASE, AND CERTAIN CANCERS ARE OCCUPATIONAL DISEASES FOR FIREFIGHTERS EMPLOYED BY UNITS OF LOCAL GOVERNMENT THAT ARE COVERED BY THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-53 reads as rewritten:

"§ 97-53. Occupational diseases enumerated. ~~enumerated; when due to exposure to chemicals.~~

(a) Occupational Diseases Due to Exposure to Chemicals. – The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

- (1) Anthrax.
- (2) Arsenic poisoning.
- (3) Brass poisoning.
- (4) Zinc poisoning.
- (5) Manganese poisoning.
- (6) ~~Lead poisoning. Provided poisoning if the employee shall have been was~~ exposed to the hazard of lead poisoning for at least 30 days in the preceding ~~12 months' period; and, provided further, only~~ 12-month period. Only the employer in whose employment ~~such~~ the employee was last injuriously exposed shall be liable.
- (7) Mercury poisoning.
- (8) Phosphorus poisoning.
- (9) Poisoning by carbon bisulphide, menthanol, naphtha or volatile halogenated hydrocarbons.
- (10) Chrome ulceration.
- (11) Compressed-air illness.
- (12) Poisoning by benzol, or by nitro and amido derivatives of benzol (dinitrolbenzol, anilin, and others).
- (13) Any disease, other than hearing loss covered in another subdivision of this section, which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment.



- 1 (14) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of
2 the eye due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound,
3 product, or residue of any of these substances.
- 4 (15) Radium poisoning or disability or death due to radioactive properties of
5 substances or to roentgen rays, X rays or exposure to any other source of
6 radiation; provided, however, that the disease under this subdivision shall be
7 deemed to have occurred on the date that disability or death shall occur by
8 reason of such disease.
- 9 (16) Blisters due to use of tools or appliances in the employment.
- 10 (17) Bursitis due to intermittent pressure in the employment.
- 11 (18) Miner's nystagmus.
- 12 (19) Bone felon due to constant or intermittent pressure in employment.
- 13 (20) Synovitis, caused by trauma in employment.
- 14 (21) Tenosynovitis, caused by trauma in employment.
- 15 (22) Carbon monoxide poisoning.
- 16 (23) Poisoning by sulphuric, hydrochloric or hydrofluoric acid.
- 17 (24) Asbestosis.
- 18 (25) Silicosis.
- 19 (26) Psittacosis.
- 20 (27) Undulant fever.
- 21 (28) Loss of hearing caused by harmful noise in the employment. The following
22 rules shall be applicable in determining eligibility for compensation and the
23 period during which compensation shall be payable:
- 24 a. The term "harmful noise" means sound in employment capable of
25 producing occupational loss of hearing as hereinafter defined. Sound
26 of an intensity of less than 90 decibels, A scale, shall be deemed
27 incapable of producing occupational loss of hearing as defined in this
28 section.
- 29 b. "Occupational loss of hearing" shall mean a permanent sensorineural
30 loss of hearing in both ears caused by prolonged exposure to harmful
31 noise in employment. Except in instances of preexisting loss of
32 hearing due to disease, trauma, or congenital deafness in one ear, no
33 compensation shall be payable under this subdivision unless
34 prolonged exposure to harmful noise in employment has caused loss
35 of hearing in both ears as hereinafter provided.
- 36 c. No compensation benefits shall be payable for temporary total or
37 temporary partial disability under this subdivision and there shall be
38 no award for tinnitus or a psychogenic hearing loss.
- 39 d. An employer shall become liable for the entire occupational hearing
40 loss to which ~~his~~the employment has contributed, but if previous
41 deafness is established by a hearing test or other competent evidence,
42 whether or not the employee was exposed to harmful noise within six
43 months preceding such test, the employer shall not be liable for
44 previous loss so established, nor shall ~~he~~the employer be liable for
45 any loss for which compensation has previously been paid or
46 awarded and the employer shall be liable only for the difference
47 between the percent of occupational hearing loss determined as of the
48 date of disability as herein defined and the percentage of loss
49 established by the preemployment and audiometric examination
50 excluding, in any event, hearing losses arising from nonoccupational
51 causes.

- 1 e. In the evaluation of occupational hearing loss, only the hearing levels
2 at the frequencies of 500, 1,000, 2,000, and 3,000 cycles per second
3 shall be considered. Hearing losses for frequencies below 500 and
4 above 3,000 cycles per second are not to be considered as
5 constituting compensable hearing disability.
- 6 f. The employer liable for the compensation in this section shall be the
7 employer in whose employment the employee was last exposed to
8 harmful noise in North Carolina during a period of 90 working days
9 or parts thereof, and an exposure during a period of less than 90
10 working days or parts thereof shall be held not to be an injurious
11 exposure; provided, however, that in the event an insurance carrier
12 has been on the risk for a period of time during which an employee
13 has been injuriously exposed to harmful noise, and if after insurance
14 carrier goes off the risk said employee has been further exposed to
15 harmful noise, although not exposed for 90 working days or parts
16 thereof so as to constitute an injurious exposure, such carrier shall,
17 nevertheless, be liable.
- 18 g. The percentage of hearing loss shall be calculated as the average, in
19 decibels, of the thresholds of hearing for the frequencies of 500,
20 1,000, 2,000, and 3,000 cycles per second. Pure tone air conduction
21 audiometric instruments, properly calibrated according to accepted
22 national standards such as American Standards Association, Inc.,
23 (ASA), International Standards Organization (ISO), or American
24 National Standards Institute, Inc., (ANSI), shall be used for
25 measuring hearing loss. If more than one audiogram is taken, the
26 audiogram having the lowest threshold will be used to calculate
27 occupational hearing loss. If the losses of hearing average 15
28 decibels (26 db if ANSI or ISO) or less in the four frequencies, such
29 losses of hearing shall not constitute any compensable hearing
30 disability. If the losses of hearing average 82 decibels (93 db if ANSI
31 or ISO) or more in the four frequencies, then the same shall
32 constitute and be total or one hundred percent (100%) compensable
33 hearing loss. In measuring hearing impairment, the lowest measured
34 losses in each of the four frequencies shall be added together and
35 divided by four to determine the average decibel loss. For each
36 decibel of loss exceeding 15 decibels (26 db if ANSI or ISO) an
37 allowance of one and one-half percent (1 1/2%) shall be made up to
38 the maximum of one hundred percent (100%) which is reached at 82
39 decibels (93 db if ANSI or ISO). In determining the binaural
40 percentage of loss, the percentage of impairment in the better ear
41 shall be multiplied by five. The resulting figure shall be added to the
42 percentage of impairment in the poorer ear, and the sum of the two
43 divided by six. The final percentage shall represent the binaural
44 hearing impairment.
- 45 h. There shall be payable for total occupational loss of hearing in both
46 ears 150 weeks of compensation, and for partial occupational loss of
47 hearing in both ears such proportion of these periods of payment as
48 such partial loss bears to total loss.
- 49 i. No claim for compensation for occupational hearing loss shall be
50 filed until after six months have elapsed since exposure to harmful
51 noise with the last employer. The last day of such exposure shall be

1 the date of disability. The regular use of employer-provided
2 protective devices capable of preventing loss of hearing from the
3 particular harmful noise where the employee works shall constitute
4 removal from exposure to such particular harmful noise.

5 j. No consideration shall be given to the question of whether or not the
6 ability of an employee to understand speech is improved by the use
7 of a hearing aid. The North Carolina Industrial Commission may
8 order the employer to provide the employee with an original hearing
9 aid if it will materially improve the employee's ability to hear.

10 k. No compensation benefits shall be payable for the loss of hearing
11 caused by harmful noise after October 1, 1971, if employee fails to
12 regularly utilize employer-provided protection device or devices,
13 capable of preventing loss of hearing from the particular harmful
14 noise where the employee works.

15 (29) Infection with smallpox, infection with vaccinia, or any adverse medical
16 reaction when the infection or adverse reaction is due to the employee
17 receiving in employment vaccination against smallpox incident to the
18 Administration of Smallpox Countermeasures by Health Professionals,
19 section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25,
20 2002) (to be codified at 42 U.S.C. § 233(p)), or when the infection or
21 adverse medical reaction is due to the employee being exposed to another
22 employee vaccinated as described in this subdivision.

23 Occupational diseases caused by chemicals shall be deemed to be due to exposure of an
24 employee to the chemicals herein mentioned only when as a part of the employment such
25 employee is exposed to such chemicals in such form and quantity, and used with such
26 frequency as to cause the occupational disease mentioned in connection with such chemicals.

27 (b) Occupational Diseases of Firefighters. – Any condition or impairment of health
28 caused by any of the following shall be deemed to be occupational diseases of firefighters
29 within the meaning of this Article:

30 (1) Hypertension.

31 (2) Heart disease.

32 (3) Respiratory disease.

33 (4) Cancer that manifests itself in a firefighter during or after the period in
34 which the firefighter is in the service of the unit of local government.

35 (5) Hepatitis that manifests itself in a firefighter during or five years after the
36 period in which the firefighter is in the service of the unit of local
37 government.

38 (6) HIV that manifests itself in a firefighter during or five years after the period
39 in which the firefighter is in the service of the unit of local government."

40 **SECTION 2.** Article 1 of Chapter 97 of the General Statutes is amended by adding
41 a new section to read:

42 **"§ 97-53.1. Compensability of firefighter occupational diseases.**

43 (a) Findings. – The General Assembly finds that:

44 (1) Firefighting is a particularly hazardous occupation that requires firefighters
45 to work under constantly changing and often unstable environments.

46 (2) Firefighters are often subjected to stressful life and death situations that
47 require lifting and maneuvering of heavy equipment in extremely hot
48 environments while wearing heavy, specialized personal protective
49 equipment.

1 (3) Firefighters are routinely exposed to hazardous agents such as carbon
2 monoxide, carcinogens, particulate matter, and a broad array of other toxic
3 chemicals generated from the smoke of burning materials.

4 (4) Firefighters as a class face an increased risk of certain infectious diseases,
5 respiratory disease, hypertension, heart disease, and certain cancers as a
6 result of their duties and responsibilities toward the general public.

7 (b) Intent. – Recognizing that firefighting is a hazardous occupation that is essential to
8 protecting the personal safety of the citizens of this State, it is in the interest of the public and
9 the welfare of those who perform firefighting activities to ensure that firefighters are
10 adequately compensated for injuries, illnesses, and deaths that are causally related to their
11 firefighting activities. Therefore, it is the intent of the General Assembly to presume that the
12 diseases specified in G.S. 97-53(b) are occupationally related to firefighting for the purpose of
13 determining eligibility for compensation under the Workers' Compensation Act.

14 (c) Definitions. – The following definitions apply in this section:

15 (1) Disability. – Incapacity because of an occupational disease described in
16 G.S. 97-53(b) to earn the wages that the firefighter was receiving at the time
17 of manifestation of the occupational disease.

18 (2) Firefighter. – A paid, partially paid, or volunteer member of a fire
19 department of a unit of local government.

20 (3) Hepatitis. – Hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B,
21 hepatitis C, or any other strain of hepatitis generally recognized by the
22 medical community.

23 (4) HIV. – The medically recognized retrovirus known as human
24 immunodeficiency virus, type I or type II, causing immunodeficiency
25 syndrome.

26 (d) Presumed Eligibility. – A firefighter shall be presumed eligible for compensation for
27 occupational disease under this Article if either of the following sets of conditions are met:

28 (1) The firefighter was required to submit to a physical examination upon
29 entering the service of the unit of local government as a firefighter, the
30 examination failed to reveal any evidence of a firefighter occupational
31 disease described in G.S. 97-53(b), and the firefighter has completed at least
32 five years of service as a firefighter for the unit of local government.

33 (2) The firefighter was not required to submit to a physical examination upon
34 entering the service of the unit of local government as a firefighter and, at
35 the time of disability by an occupational disease described in G.S. 97-53(b),
36 the firefighter has completed at least five years of continuous service
37 immediately preceding January 1, 2009, as a firefighter for the unit of local
38 government.

39 (e) Burden of Rebuttal. – In the case of cancer, heart disease, hypertension, or
40 respiratory disease, the unit of local government has the burden of proving by a preponderance
41 of competent evidence that the condition was caused by some means other than the firefighter's
42 occupation in order to disqualify the firefighter from receiving compensation for occupational
43 disease pursuant to this section.

44 (f) Applicability. – This section applies to firefighters of units of local government
45 only.

46 **SECTION 2.** This act is effective when it becomes law and applies to claims for
47 workers' compensation benefits filed on or after that date.