

Governor Rendell Vetoes Popular Firefighter Bill

On November 27, Pennsylvania Gov. Ed Rendell put an end to the hopes of firefighters across the state when he vetoed HB 1231, a bill that would have expanded the types of cancer considered occupational diseases for firefighters under the state's workers' compensation programs. The Governor's veto was made despite the popularity of the bill – it passed through the House unanimously and through the Senate just as overwhelmingly with a 45-4 vote.

The potentially high costs to the municipalities paying for workers' compensation coverage for professional and volunteer firefighters was the primary reason the bill did not make it past the Governor's desk. In his veto message, Gov. Rendell stated that "this legislation threatens public safety by raising the specter of cuts to essential services, or of forcing local governments to raise property taxes at the same time that Pennsylvania families are struggling economically."

Bill Would Have Increased Workers' Comp Coverage for Cancer

Twenty mayors lobbied hard against the bill, arguing that if the bill passed, it would severely affect their ability to continue to pay for firefighters' services. The Pennsylvania League of Cities and Municipalities also came out strongly against the bill, saying that their analysis showed it would cost local governments more than \$360 million over a five-year period.

In addition to costs, Gov. Rendell also expressed his concerns about placing the burden on municipalities to prove that the cancer was not caused by firefighting duties. The bill created a presumption that if a firefighter developed a type of cancer caused by exposure to a Group 1 carcinogen, that the cancer

was an occupational disease. Municipalities could rebut the presumption if they could prove that the cancer was caused by conduct or activities outside of firefighting duties – something Gov. Rendell believed would be an impossible burden for municipalities to meet because “medical science doesn’t know what causes most cancers.”

If HB 1231 had passed, it would have provided medical coverage for life for firefighters diagnosed with certain types of cancer before retirement or within five years of retirement. Those diagnosed five to 10 years after retirement would have had the burden of proving they had been exposed to cancer-causing chemicals during their time as a firefighter before qualifying for workers’ comp benefits.

Under the current system in Pennsylvania, the type of health care coverage firefighters have varies from one municipality to the next. Most volunteer firefighters – who account for 65,000 of the estimated 72,000 firefighters in the state – do not retain any medical benefits after they retire.

Some of the other requirements under the bill included:

- A firefighter had to work continuously for at least four years as a firefighter before becoming eligible
- The firefighter had to pass a physical exam prior to making a claim for benefits
- The firefighter had to demonstrate direct exposure to a Group 1 carcinogen
- The firefighter had to demonstrate that he or she had not engaged in any other activities that would have increased his or her risk of developing cancer, like smoking

Currently 32 states have laws similar to the one passed by the Pennsylvania legislature. These states have not seen a huge increase in the number of workers’ comp claims related to

occupational cancer filed by firefighters. Nor have they seen an increase in the costs of their workers' comp insurance. California, which employs the largest number of firefighters, has an average of 14 of these types of claims each year and has not reported an increase in costs as a result of the expanded cancer coverage.

Firefighters Face Increased Risks of Cancer

Scientific studies have shown that firefighters are at a greater risk for developing certain types of cancer, including lung, brain, skin and prostate cancer. For example, a 2006 study by researchers at the University of Cincinnati found that professional male firefighters have a 100 times greater risk of developing testicular cancer than the general population.

Just by the nature of the profession, every time a firefighter enters a burning building, he or she runs the risk of encountering known carcinogens, such as asbestos, benzene, chloroform, diesel fumes and formaldehyde. In some cases, the protective equipment they wear does not create a sufficient barrier to prevent these carcinogens from coming into contact with them, most often through inhalation. For example, the National Institute for Occupational Safety and Health (NIOSH) looked at the levels of benzene outside and inside a firefighter's mask after 22 different fires. In this sample, NIOSH found that the levels of the carcinogen inside a firefighter's mask were still 21 times higher than levels deemed permissible by the Occupational Safety and Health Administration (OSHA).

With these statistics in mind, it seems wholly unfair not to give firefighters coverage under the state's workers' comp system for cancers that they develop as a hazard of doing their job. If they were not willing to risk their lives to help others, then they would not have such a high risk of exposure to these known carcinogens. If cities across the

state are willing to ask them to take such a risk with their lives, then governmental entities should be willing to help them cover their health costs in the event they develop occupationally related cancer.

Conclusion

While the firefighter bill may not have made it past Governor Rendell's desk this term, it may not be the last time the legislation makes it there. Rep. Kevin Murphy (D-Scranton) has said he plans to reintroduce the bill next term after Governor-Elect Corbett takes office.

For more information on filing a workers' compensation claim related to an occupational illness or disease or a workplace injury, contact an experienced workman's comp attorney today.