



of limitations in the available data, uncertainty about the interpretation of certain changes, and limited means of forecasting their future use. But according to the National Council on Compensation Insurance (NCCI), “despite these limitations, understanding the potential impact of proposed firefighter presumptive compensability is essential because it could result in a significant increase in workers’ comp costs for firefighter classifications as well as unintended consequences to a workers’ comp system.”

“I think there’s a general sense that the potential exposure is undervalued,” added Erin Rian, chief operating officer for NLC Mutual Insurance Company, which serves state municipal league risk pools in 31 states.

While there appears to be broad support in many legislatures for changes to workers’ compensation, the business community has raised concerns about the fiscal impact. According to a January *Insurance Journal* article, “Peter Myers, from the Connecticut Business and Industry Association, cited the years of declining workers’ compensation claims and rates as a ‘positive step for Connecticut workers and businesses’ that businesses hope will continue. He cautioned against a broad expansion of PTSD benefits that ‘could be taken advantage of’ and result in higher costs for employers ‘because of the complexity of identifying and the limited tests available to identify post-traumatic stress injuries.’”

Police and PTSD

Serving as a police officer has never been easy, and the job has only gotten tougher in recent years.

One of the major expansions in the realm of workers’ comp has come from police officers and other first responders who make claims filed for PTSD, a potentially debilitating condition, which they argue is directly related to their experiences on the job.

In fact, according to a May 3, 2024, U.S. Department of Labor blog, the NCCI noted in its 2023 Regulatory and Legislative Trends Report that 86 bills

PERSPECTIVE

Workers’ Comp Coverage Sensibly Expands, but There’s a Price Tag

BY KATHERINE BARRETT AND RICHARD GREENE

The first nine states to enact workers’ compensation statutes did so in 1911. In the years that have passed, almost all the rest joined suit. Typically, worker compensation claims provide cash benefits, medical care, or both for workers whose injury or illness resulted from their job. The costliest lost-time workers’ compensation claims come from motor-vehicle accidents, burns or slips and falls, according to the National Safety Council.

But over the last several years, U.S. cities have experienced an increasing number of expensive claims, largely driven by first responders for whom definitions of illnesses covered by workers’ comp have been expanding dramatically.

The core of the changes emanates from states that have changed laws to create something called a rebuttable presumption—an assumption that something should be covered by workers’ comp, unless there’s abundant evidence that this is an inappropriate interpretation of the law.

The two most significant areas in which rebuttable presumptions are coming into play are with police officers who, in a highly stressful workplace, are increasingly able to argue that cases of post-traumatic stress disorder (PTSD) are job-related, and firefighters who are arguing that in many instances, cases of cancer are attributable to inhalation of toxic fumes on the job.

Estimates of the costs of these changes are hard to come by because

were introduced across the country on the subject of workplace-related mental injuries, including 71 related to post-traumatic stress and many related to first responders. In 2023, the State of Connecticut expanded workers' compensation coverage for workers with post-traumatic stress injuries, while the states of Idaho, Missouri, Nevada, Tennessee, Virginia, and Washington all enacted laws making it easier for first responders to get care for PTSD developed on the job.

As you might expect, not all cities are happy to go along with the idea that any police officer with mental health problems can collect workers' comp. According to the Minneapolis Star Tribune, for example, several city council members in the City of Minneapolis, Minnesota, questioned whether taxpayers should bear the cost of claims, particularly in cases in which officers' integrity had been questioned. The article explained that both the number and cost of officer PTSD claims had grown, with "claims typically costing between \$100,000 and \$200,000." The city ultimately settled all the claims.

Meanwhile, the Minnesota Legislature has been taking steps to control the costs of PTSD claims through a proactive approach, explained Dan Greensweig, administrator of the League of Minnesota Cities Insurance Trust, which includes members from most cities in the state (though not Minneapolis). "Last year the Legislature created a \$140 million program to cover the costs of therapy, with the hope of getting people back to work more quickly," he said. This new funding, which is used for the treatment of officers while they stay on the payroll, "anecdotally seems to be working out."

The State of Massachusetts has a similar program and provides grants to municipal police departments to deliver services for police officers and other first responders in the wake of traumatic incidents," according to a March 2024 state press release.

In the release, Lieutenant Governor Kim Driscoll said: "Police officers put their lives on the line to protect members

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of our communities. Critical incident stress management programs, like those funded through these grants, provide first responders with vital peer counseling and other mental health services."

PTSD therapy can yield successful outcomes, thereby cutting down on the number of workers' comp claims. Similarly, for firefighters, safety measures, incentives and equipment improvements also can potentially reduce costs by helping to protect against illness.

Firefighters and Cancer

The second area where workers' comp laws have been evolving and expanding pertains to firefighters. In their case, there's a presumption that many cancers and other diseases can automatically be presumed to have been caused by the nature of firefighters' jobs, which can include inhaling potentially disease-causing fumes.

As part of the language expanding the coverage of cancer in workers' comp, the Hawaii Legislature stated that "the benefit programs recognize that firefighters assume significant occupational risks while performing an essential public service. By providing sufficient workers' compensation coverage for firefighters, states can help ensure that firefighters receive timely and appropriate medical treatment and can help ease the emotional and financial burdens for firefighters and their families if the firefighter is diagnosed with cancer."

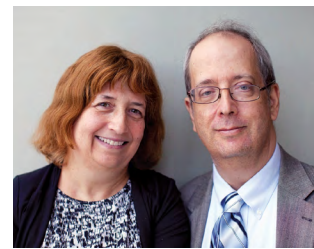
Despite the presumption, in many cases, if a fire department can

demonstrate that a case of cancer is probably not job-related, then the workers' comp presumption doesn't apply. According to a brief from the California Professional Firefighters, that state's "presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer."

Some states use very broad definitions of cancer, while others specifically list the types of cancer that are covered. The former approach, naturally, has the potential of creating higher workers' comp costs.

Meanwhile, even for states that spell out specific cancers, the number of cancer categories covered has been expanding. For example, effective October 2024, the State of Maryland will add thyroid colon and ovarian cancer to the ten cancers already spelled out as eligible for workers' comp coverage.

At a time when there's a severe shortage of first responders from coast to coast, these changes in workers' comp coverage are probably inevitable, especially in places with strong unions representing these public sector employees. Will there be abuses? Probably. But the trend appears to be an inevitable one—and for good reason. So communities will be wise to prepare themselves for the expansion in costs and to also work on safety measures that can cut down worker comp claims by helping to protect against illness or injury. ■



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