

**WORKERS' COMPENSATION - FIRE  
DEPARTMENT EMPLOYEES**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Joseph G. Murray**

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Labor Code to address presumptions related to fire department employees and workers' compensation.

**Highlighted Provisions:**

This bill:

► provides for a presumption for purposes of workers' compensation that certain occupational diseases are employment related for fire department employees.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**34A-3-113**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **34A-3-113** is enacted to read:

**34A-3-113. Presumption for fire department employees.**

(1) As used in this section:

(a) (i) "Fire department employee" means an individual that:



28 (A) is a member of a fire department or other organization that:  
29 (I) provides fire suppression and other fire-related services; and  
30 (II) is an agency of a political subdivision of the state; and  
31 (B) (I) is in a capacity that includes responsibility for the extinguishment of fire; or  
32 (II) is emergency medical service personnel, as defined in Section 26-8a-102, who is a  
33 member of a fire department or other organization described in Subsection (1)(a)(i) when  
34 providing services as an emergency medical service personnel.

35 (ii) "Fire department employee" includes a volunteer member of a fire department or  
36 other organization described in Subsection (1)(a)(i).

37 (b) "Line-of-duty employment" means an activity of a fire department employee for  
38 which the fire department employee is obligated or authorized to perform as a fire department  
39 employee by:

40 (i) rule;

41 (ii) condition of employment or service; or

42 (iii) statute.

43 (c) "Presumptive occupational disease" means one of the following cancers:

44 (i) brain cancer;

45 (ii) cancer of the digestive system;

46 (iii) genitourinary tract cancer;

47 (iv) leukemia;

48 (v) lymphoma, except for Hodgkin's disease;

49 (vi) melanoma;

50 (vii) multiple myeloma; or

51 (viii) respiratory cancer.

52 (2) Notwithstanding the other provisions of this chapter or Chapter 2, Workers'  
53 Compensation Act, for a claim for compensation under this chapter that meets the requirements  
54 of Subsection (3), there is a rebuttable presumption that a presumptive occupational disease:

55 (a) arose out of and in the course of line-of-duty employment; and

56 (b) is medically caused or aggravated by the line-of-duty employment described in  
57 Subsection (2)(a).

58 (3) The presumption described in Subsection (2) is created if:

59 (a) the claim for compensation under this chapter is filed within the time periods  
60 provided in Sections 34A-3-108 and 34A-3-109;

61 (b) the fire department employee for which the claim is filed is employed in the  
62 line-of-duty employment:

63 (i) for at least 36 months; and

64 (ii) (A) on the day on which the claim for compensation is filed; or

65 (B) within no more than three years before the day on which the claim for  
66 compensation is filed;

67 (c) (i) as a condition of being employed in line-of-duty employment, the fire  
68 department employee passed a physical examination before the day on which the fire  
69 department employee made a claim under this chapter for a presumptive occupational disease;  
70 and

71 (ii) the examination described in Subsection (3)(c)(i) did not indicate evidence of a  
72 presumptive occupational disease; and

73 (d) the claim for compensation under this chapter is for a presumptive occupational  
74 disease.

75 (4) If the conditions of Subsection (3) are met, a fire department employee may rely on  
76 the presumption described in Subsection (2) to meet a burden of proof to establish entitlement  
77 to compensation under this chapter and Chapter 2, Workers' Compensation Act.

78 (5) The presumption described in Subsection (2) may be rebutted if the employer or the  
79 employer's insurer establishes by a preponderance of the evidence that the presumptive  
80 occupational disease:

81 (a) did not arise out of and in the course of the line-of-duty employment; and

82 (b) was not medically caused or aggravated by the line-of-duty employment described  
83 in Subsection (5)(a).

84 (6) Notwithstanding the other provisions of this section, an employer is not liable for a  
85 presumptive occupational disease if after a fire department employee is no longer employed in  
86 the line-of-duty employment, the fire department employee is injuriously exposed to the  
87 hazards of the presumptive occupational disease as provided in Section 34A-3-105.

88 (7) Notwithstanding the other provisions of this section, Title 26, Chapter 6a, Disease  
89 Testing and Workers' Compensation Presumption for Benefit of Emergency Medical Services

90 Providers, governs whether there is or is not a presumption that a disease, as defined in Section  
91 26-6a-1, is compensable under this chapter or Chapter 2, Workers' Compensation Act.

92 (8) This section may not be construed as preventing a fire department employee from  
93 receiving workers' compensation benefits under this chapter or Chapter 2, Workers'  
94 Compensation Act, because the fire department employee fails to meet the requirements under  
95 this section to establish the rebuttable presumption described in Subsection (2).

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**Legislative Review Note**  
**as of 2-3-04 9:52 AM**

This bill creates a class consisting of certain firefighters and medical providers of fire departments. For this class the bill provides a rebuttable presumption that certain diseases presumptively arose as a result of working for the fire department and therefore are compensable under workers' compensation statutes. Under equal protection principles of the Constitution of the United States and the uniform operation of the laws provisions of the Utah Constitution, there are limits on a legislature's ability to establish classifications and then treat members of the classes differently. If the classification does not involve certain protected classes, courts generally apply a rational basis test when reviewing legislative classifications. In addition, because of the exclusive remedy element of workers' compensation, the open courts provision of the Utah Constitution may be implicated if the remedies provided under workers' compensation are found inadequate. In examining the permissibility of classes, courts look to factors such as the relationship between the class and the legislative objective being pursued. For example, a court may look at the relationship between the creation of the presumption and the level of exposure fire department employees may experience because of the nature of their employment.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0150**

**Workers' Compensation-Fire Department Employees**

*10-Feb-04*

*4:06 PM*

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**State Impact**

Firefighter employers will pay more in Workers' compensations premiums for qualified workers. Most of the costs would be born by local governments although the state does hire some firefighters. This bill has a Legislative Review Note. There may be additional state costs if the bill is challenged in court.

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**Individual and Business Impact**

Qualifying firefighters will receive increased benefits.

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**Office of the Legislative Fiscal Analyst**