

**STATE and LOCAL  
FINAL FISCAL IMPACT**

**Drafting Number:** LLS 07-0357

**Date:** June 25, 2007

**Prime Sponsor(s):** Rep. Cerbo  
Sen. Fitz-Gerald

**Bill Status:** Signed into Law

**Fiscal Analyst:** Gary J. Estenson (303-866-4976)

**TITLE:** CONCERNING WORKERS' COMPENSATION COVERAGE FOR FIREFIGHTERS WHO CONTRACT CERTAIN TYPES OF CANCER.

<b>Fiscal Impact Summary</b>	<b>FY 2007-2008</b>	<b>FY 2008-2009</b>
<b>State Revenue</b>		
Cash Funds	Minimal Increase	Minimal Increase
<b>State Expenditures</b>	\$0	\$0
<b>FTE Position Change</b>	0.0 FTE	0.0 FTE
<b>Effective Date:</b> The bill was signed into law on May 17, 2007, and it applies to all claims filed on and after that date.		
<b>Appropriation Summary for FY 2007-2008:</b> None required.		
<b>Local Government Impact:</b> See Local Government Impact section.		

\* For FY 2007-08, the Department of Labor and Employment, Division of Workers' Compensation collected premium assessments for the following funds: Workers' Compensation Cash Fund (1.0%); Major Medical Insurance Fund (1.9%); Second Injury Fund (.09%).

**Summary of Legislation**

Under current law, a worker has the burden of proving that an injury or occupational illness is work-related in order to collect workers' compensation benefits. The bill requires that the death, disability, or impairment of a firefighter shall be presumed to be an occupational disease and work-related if:

- the condition is caused by cancer of the brain, skin, digestive, hematological, or genitourinary system;
- the person has been employed for five or more years as a firefighter in any political subdivision; and
- the firefighter underwent a physical examination at the time of becoming a firefighter and the examination did not reveal substantial evidence of the existence of cancer prior to becoming a firefighter.

If a firefighter's employer or insurer can demonstrate by a **preponderance of the evidence** that the firefighter's cancerous condition was not work-related, the employer or insurer shall not be liable for compensation.

## **State Revenue**

The bill may result in a minimal increase in state revenue. Insurance companies providing workers' compensation insurance pay a surcharge on employer workers' compensation premiums paid to fund the state workers' compensation system. Self-insured employers pay a premium equivalent. Thus, if the bill causes an increase in insurance premiums or the premium equivalent for some local governments, the amount paid to the state in premium surcharge would increase. However, any increases would be minimal because firefighters only make up a small portion of the state workforce.

## **State Expenditures**

The state self-insures its workers' compensation liability. Since state workers' compensation reserve requirements are not expected to increase, the bill will not effect state department expenditures.

***Department of Transportation (CDOT).*** The state employs fewer than 10 firefighters. These firefighters are employed by the Department of Transportation and are stationed at the Eisenhower and Hanging Lake Tunnels to provide emergency response to fires and hazardous material spills occurring inside the tunnels. Since the number of firefighters employed is small relative to the number of employees in the department and the state, the portion of CDOT's assessment to the State Workers' Compensation Reserve Fund will be minimal.

***Department of Labor and Employment, Division of Workers' Compensation.*** The DWC will prepare a report regarding the impact of the bill on workers' compensation claims and costs. The DWC will receive report data from self-insured employers and insurers and the workload associated with report preparation will be minimal and will not result in additional DWC costs.

***Department of Personnel and Administration.*** The bill may result in a small increase in workers' compensation cases heard by the Department of Personnel and Administration, Office of Administrative Courts, if the number of disputed claims increases.

## **Local Government Impact**

Since a firefighter with a listed cancerous condition will no longer be required to prove that the cancer is work-related, more firefighters with cancer are likely to file workers' compensation claims. However, the potential claim increase cannot be quantified at this time.

***Background.*** Under current law, cancer caused by work-related exposure to carcinogens is considered an occupational disease and is compensable under workers' compensation. DWC data for calendar year 2004, the most recent year with data available, indicates two (2) firefighters filed occupational disease claims. Neither claim involved a cancerous condition. Currently, 22 states have workers' compensation laws stating that if a firefighter has cancer, the condition is presumed to be work-related.

***Workers' Compensation.*** Most firefighters in Colorado are local government employees. Presently, there are 5,540 paid firefighters, 9,450 volunteer firefighters, and at least 3,761 retired firefighters in the state. These employees are covered by either a worker's compensation insurance policy or a self-insured employer. Self-insured fire departments typically pool their workers' compensation risk either with other fire departments and districts or within a larger political subdivision, such as a municipality. If the shift in the burden of proof significantly increases the number of compensable firefighter claims, local government cost increases will occur due to increased claim costs for self-insured fire departments or increased premium costs for fire districts and municipalities with workers' compensation insurance.

The National Council on Compensation Insurance (NCCI) determined that HB 07-1008 could increase local government costs to provide workers' compensation insurance to firefighters by 15 to 35 percent. However, the analysis was based on the evidentiary standard present in the bill as introduced, which stated that "clear and convincing medical evidence" must indicate that a firefighter's cancer is not work-related. The bill's current standard is proof by a "preponderance of the evidence," which is a less burdensome standard to overcome.

***State Firefighters and Police Pension Fund.*** The bill will not impact disability benefits paid by the Firefighters and Police Pension Fund (FPPF) because the fund already pays for disability caused by cancer, regardless of whether or not the illness was work-related. If more firefighters with cancer were to receive workers' compensation payments, the amount of workers' compensation benefits would decrease because these benefits are offset by the amount of FPPF benefits paid. However, the offset cannot reduce the combined benefit by more than 100 percent of state average weekly wage.

### **Departments Contacted**

Labor and Employment  
Personnel and Administration

Judicial  
Local Affairs

Transportation