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DEPARTMENT OF LABOR AND EMPLOYMENT

DIVISION OF WORKERS' COMPENSATION

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Report pursuant to 8-41-209(3)(a); Firefighters contracting cancer

Senator Veiga, Chair, Senate Business, Labor and Technology Committee;

Representative Rice, Chair, House Business Affairs and Labor Committee

The Division of Workers' Compensation is required to submit a report to the above Legislative Committees by March 1, 2009, regarding workers' compensation claims that fall under section 8-41-209. This statutory section became effective on May 17, 2007. It provides a presumption of compensability when qualifying firefighters contract certain types of cancers (a copy of the law is attached for reference). The information in this report reflects claims filed from May 17, 2007 through December 31, 2008.

Every Colorado carrier or self-insured employer who reported workers' compensation premiums during 2007 or 2008 based on the occupation codes for firefighter or volunteer firefighter were contacted to provide information for this report. All provided timely responses. In addition, the division's database was independently searched for any missed claims. Statute directs that the report should provide information "regarding the number of claims allowed pursuant to this section and the costs associated with those claims." As not all claims are filed with the division, and the division does not have cost information on these claims, this report could not have been prepared without the assistance of the carriers, employers, and NCCI.

During the relevant time period there have been 13 claims involving firefighters with injury types of cancer. There were 11 different employers for the 13 claims, with 2 employers having 2 claims each.

Twelve of these claims have been filed with the division and assigned claim numbers. If a claim is denied or if an injury

causes a worker to miss more than three shifts from work, the claim is required to be filed with the division. It is therefore presumed that the one claim not filed with the division is admitted to be compensable but has not caused more than three shifts of time lost from work. In all 12 of the claims that have been filed with the division the employer/insurer has denied liability. In some of those claims the firefighter has taken action to challenge the denial and the claim is set for hearing at the Office of Administrative Courts. In some of the other claims no action has been taken since the claim was denied.

The division requested information regarding the amount paid out in these claims through December 31, 2008. No indemnity benefits were paid in any of the claims as of that date, nor have any of the claims resolved through a settlement agreement. Some medical care has been provided, a total of \$4,722 in 6 of the claims. Other expenses (i.e. legal, investigation) were paid in 11 of the claims for a total of \$40,138.

The division also requested an estimate of the total amount that was anticipated to be paid in these claims. The responses varied from rather large amounts to zero to "unknown." For the 11 claims in which an amount was provided, the total estimated costs added up to \$724,000.

Overall, it appears that fewer claims have been filed under this statutory section than was anticipated. It is also rather surprising that with one apparent exception all of the claims have been denied, and to date the costs for these claims have been negligible. As of the time this report was prepared none of these claims have completed a hearing to determine compensability. If any of the claims are determined to be compensable there is the possibility for large amounts to be paid for medical care and/or indemnity benefits.