



JULY 6, 2017

DISCUSSION OF PROVISIONS SB17-214 SUBSECTION 13 REGARDING TREATMENT AS ON THE JOB ILLNESS OR INJURY

There is definitely confusion surrounding this issue so we will clarify our understanding. The issue seems to come up when the phrase “ON-THE-JOB INJURY OR ILLNESS” is taken only in reference to one sentence and outside the context of the whole legislation.

In its entirety Section 13 specifically states that “This Subsection (13) does not affect any determination as to whether the cancer is covered under the “Workers’ Compensation Act of Colorado Articles 40 to 47 of Title 8.” This, in and of itself, should be enough clarity. The complete wording is:

(13) FOR THE PURPOSE OF EMPLOYER POLICIES AND BENEFITS, A CANCER DIAGNOSIS IS TREATED AS AN ON-THE-JOB INJURY OR ILLNESS. THIS SUBSECTION (13) DOES NOT AFFECT ANY DETERMINATION AS TO WHETHER THE CANCER IS COVERED UNDER THE “WORKERS’ COMPENSATION ACT OF COLORADO”, ARTICLES 40 TO 47 OF TITLE 8.

The Colorado Division of Workers’ Compensation added the above highlighted wording specifically to protect this employer designation of “treated as an on-the-job” from being interpreted as work-related for the purposes of workers’ compensation. This is simply a “condition of payment” agreed to by the employer for the sake of argument as reflected in the title of this subsection. The only purpose of the phrase “ON-THE-JOB INJURY OR ILLNESS” in the statute is to ensure that firefighters do not lose the Line of Duty benefit from their employers that are currently held. This Line of Duty benefit is a short term disability treatment typically associated with such an incident, and it varies from one department to another and ranges from nothing to one year’s salary. This subsection does not change Colorado workers’ compensation statute unlike Section 2 below.

As stated, this portion of the legislation does take cancer for firefighters out of WC:

SECTION 2. In Colorado Revised Statutes, 8-41-209, add (4) as follows: 8-41-209. Coverage for occupational diseases contracted by firefighters. (4) AN EMPLOYER WHO PARTICIPATES IN THE VOLUNTARY FIREFIGHTER CANCER BENEFITS PROGRAM CREATED IN PART 4 OF ARTICLE 5 OF TITLE 29 IS NOT SUBJECT TO THIS SECTION UNLESS THE EMPLOYER ENDS PARTICIPATION IN THAT PROGRAM.

By joining the Trust, fire operations no longer have any liability under the 2007 presumption law. To reemphasize, cancer classified as an “ON-THE-JOB INJURY” in Subsection 13 has no bearing given cancer’s exclusion from WC by law. Disease, as a general rule, is not covered by WC except where it can be proven to be work related. If cancer were not excluded from WC, health

carriers would have to cover it the same way they did in 2006, and be subject to bad faith claims as they have no basis for denial. The new legislation was built on the premise that employers agreed to certain concessions in exchange for firefighters giving up their rights under the 2007 WC presumption statute:

- There would be no investigation to determine the cause of the cancer because neither the employer nor the firefighter is conducting an investigation.
- Employers agree to treat cancer as “in the line of duty,” even though it is debatable. This “Condition of Payment” as stated in the statute is part of the agreement, and does not change the previous WC statute nor does it constitute the burden of proof required under that statute.

A review of one health benefits carrier’s policy exclusions states:

“Workers’ Compensation of Employer’s Liability. Financial responsibility for Services for any illness, injury, or condition, to the extent a payment or any other benefits, including any amount received as a settlement (collectively referred to as “Financial Benefits”) is provided under any workers’ compensation or employer’s liability law. We will provide Services even if it is unclear whether you are entitled to a Financial Benefit, but we may recover Charges for any such Services from the following sources

- a. Any source providing a Financial Benefit or from whom a Financial Benefit is due.
- b. You, to the extent that a Financial Benefit is provided or payable or would have been required if you had diligently sought to establish your rights to a Financial Benefit under any workers’ compensation or employer’s liability law.”

Under the new legislation, firefighters are spared an invasive inquiry into their personal medical, family, and lifestyle histories to determine the source of the disease. Additionally, firefighters need to be aware that this is not workers’ compensation, but rather coverage that pays out-of-pocket expenses due to a covered cancer diagnosis.

We hope you find this discussion helpful. Please let me know where further clarification can be made. We would like to have this discussion distributed to all interested parties as we understand several of the self-insured share the same concerns.