



JLARC Study of Virginia's Workers' Compensation Disease Presumptions

Overview for Senate Finance and
Appropriations Committee

Presumptions give workers the benefit of the doubt when cause of disease is uncertain

- Presumptions establish in law a presumed causal connection between an occupation and a disease
 - Intended to make it easier for workers to obtain benefits when proving causality is difficult or impossible
- Virginia presumptions for public safety workers are also used by other states
 - Firefighting and cancer: 40 states
 - Firefighting and cardiovascular disease: 34 states
 - Law enforcement and cardiovascular disease: 15 states

National experts consulted to review existing medical research surrounding presumptions

- Epidemiologists from Johns Hopkins University's Bloomberg School of Public Health consulted for study
 - Analyzed and summarized existing research on Virginia's current and proposed disease presumptions
- 83 studies on cancer, cardiovascular disease, respiratory disease, and PTSD among firefighters and/or police officers identified and analyzed
 - Evaluated for quality and bias

PTSD = Post-traumatic stress disorder

Existing research provides some support for most existing and proposed cancer presumptions

<u>Evidence indicates increased risk</u>	<u>Evidence is insufficient to determine risk</u>	<u>No research has been conducted</u>
Prostate	Colon (<i>proposed in 2019</i>)	Ovarian
Throat	Pancreatic	
Brain (<i>proposed in 2019</i>)	Breast	
Leukemia		
Rectal		
Testicular (<i>proposed in 2019</i>)		

Source: Review of 2009–2019 epidemiological research studies on firefighting-cancer associations by the JHU epidemiologists.

Addition of three cancers expected to increase employers' workers' comp and LODA costs

- Adding brain, colon, and testicular cancers expected to result in only about six new compensable claims per year, but five-year total cost per compensable claim expected to be high
- Employers' workers' compensation and LODA premiums expected to increase
 - Workers' compensation premiums – up to \$269 per firefighter in first year*
 - LODA premiums – up to \$61 per FTE in first year

LODA – Line of Duty Act

*Includes premium costs per active firefighter. Some additional liability would be created for firefighters no longer working with employer and still within statute of limitations.

Sufficient evidence for General Assembly to consider adding three presumptions

- Brain and testicular cancers could be added to list of presumptions in statute
- Although evidence is less strong, colon cancer could also be added as a presumption
- Existing cancer presumptions with insufficient evidence or no research could be maintained and subject to sunset
 - Better data on firefighting-cancer associations will be available after National Firefighter Registry is fully implemented

Requirements to establish cancer presumption for firefighters are unreasonably burdensome

- Most cancer claims disputed at VWC resulted in firefighter not receiving benefits (2009 to 2018)
 - About half of denied claims were because firefighters could not prove exposure to specific carcinogen that causes their type of cancer
 - Proving exposure to specific carcinogens is very difficult and costly
- Requiring firefighter to show exposure to hazardous *conditions* would be more reasonable
 - 8 states include a similar exposure requirement

*VWC = Virginia Workers' Compensation Commission

Cancer presumption's 12 continuous years of service requirement inconsistent with research

- Basis of Virginia's 12-year service requirement is unclear and does not align with scientific research
 - Some scientific evidence that exposure durations shorter than 12 years can lead to increased cancer risk
- Longest of 29 states with a single service requirement
 - Other states' service requirements range from one to 10 years, with five years of service most common
- Current requirement that service be *continuous* also does not align with research
 - Cumulative service would be more reasonable

Recommendations to address cancer presumption requirements

- Modify the cancer presumption to allow firefighters to meet the toxic exposure requirement through evidence that they responded to fire scenes, either during the fire or afterwards as part of clean-up or investigation
- Reduce the years of service requirement for the cancer presumption
- Remove the word “continuous” from years of service requirement for the cancer presumption

Stronger support for cardiovascular disease presumption with longer service

- Best available research offers some support that a plausible connection exists between covered public safety occupations and cardiovascular disease
- Several studies indicate risk of cardiovascular disease increases with length of service
- 16 of 34 states with cardiovascular disease presumptions have a service length requirement
 - Most require five years (VA has no service requirement)
 - Would reduce risk of employers paying for non-work-related diseases

Difficult for public safety workers to prevail on PTSD claim under current case law

- Virginia public safety workers have been denied benefits for PTSD as an injury (i.e., due to a single traumatic event) because the circumstances that caused their PTSD could have been expected
- Instead of establishing a presumption, amend the law to allow PTSD claims to be compensable regardless of whether the circumstance could have been expected
 - More direct approach to address public safety stakeholders' specific concerns than creating presumption

Estimates of employer costs of PTSD presumption vary widely

- SB 1465 (2019) expected to result in 280 to 592 new compensable claims per year across all eligible law enforcement and firefighter positions
 - Wide range due to uncertainty in PTSD incidence rates
- Employers' workers' compensation and LODA premiums expected to increase
 - Workers' compensation premiums – between \$121 and \$671 per first responder in first year*
 - Magnitude of increase in LODA costs is unknown

*Includes premium costs per active public safety worker. Some additional liability would be created for public safety workers no longer working with employer and still within statute of limitations.

Key study findings regarding presumptions

Best available scientific evidence provides some support for most existing and proposed disease presumptions.

Evidentiary requirements for cancer presumptions are unreasonably burdensome and not supported by science.

Adding a years of service requirement for cardiovascular disease presumption would reduce risk that employers pay for non-work related diseases.

Concerns prompting PTSD presumption legislation could be addressed more directly through a statutory clarification of compensable injuries.