

NLC-RISC DISEASE/ILLNESS PRESUMPTION SURVEY RESULTS

3/27/06

INTRODUCTION

Access to benefits under workers' compensation and other benefit programs depends on whether or not a disease or illness is work-related. Presumption laws specify that certain disease or illness claims are compensable without evidence being provided by the employee that the disease or illness is work-related. In most cases, the claims may be disputed (rebutted) by employers. In these cases, the employer must produce evidence that the disease or illness was caused by something other than employment. Because of the additional cost burdens on cities and risk pools associated with presumption statutes, this is an area of great interest to the state municipal league community.

In order to obtain comprehensive information on presumption laws around the country, NLC-RISC developed and sent a presumption survey in mid-January 2006 to all 34 RISC pools and to the 15 state leagues that have no RISC pool members. Fifteen RISC pools and one state league with no RISC pool (Louisiana) responded to the survey. This represents a 33% response rate.

SUMMARY OF FINDINGS

Part I: Disease/Illness Laws

While there were many similarities among the states in how the statutory presumption applies, there were notable differences as well. Responses to selected survey questions have been examined.

Responding States:

AK¹, AZ, CO, CT, FL, IL, IA, LA, MI, NH, NC, SC, SD, TX, VT, VA (16)

Responding States with Current Presumption Statute:

AZ, CO, CT², FL, IL³, IA³, LA, MI, NH⁴, SC, TX, VT, VA (13)

NOTES:

¹ In Alaska: "HB31 was pre-filed 12/30/04. It remains very much alive today in House Rules, awaiting almost certain passage in the House and then a more challenging trip through the Senate." Kevin Smith, Administrator, AK Pool

² In CT: The presumption statute was repealed on 7/1/96 for any police or fire personnel hired after that date, i.e., the presumption only applies to police/fire personnel hired prior to 7/1/96.

³ In IL and IA: Presumption is under the state disability retirement statute, not workers' compensation.

⁴ In NH: *“The original Heart & Lung Disease presumption was effective prior to November, 1984 [August 31, 1973]. In November, 1984, the NH voters amended the State Constitution to adopt Article 28-a, which prohibited unfunded State mandates on local governments. The cancer presumption amendment to RSA 281-A:17 was enacted in 1988, effective July 1, 1989. The cancer presumption was challenged in court in the case of New Hampshire Municipal Workers’ Compensation Fund v. Flynn and the NH Supreme Court ruled that the cancer presumption was an unfunded mandate. Thus, even though the Cancer presumption remains on the books, it is unenforceable because the Legislature is unwilling/unable to fund the WC benefits that would be payable to those claiming the presumption.”*
John Andrews, Executive Director, NH Local Government Center

Diseases/Illnesses Covered:

Cancer:

AZ, IL, LA, NH, TX, VA

Heart Diseases:

CT, FL, IL, IA, LA, MI, NH, SC, TX, VT, VA

Lung Diseases:

IL, IA, LA, MI, NH, SC, TX, VA

Infectious Diseases:

AZ, FL, IL, TX, VA

Infectious Disease (Hepatitis C only):

CO

Worker Classes Covered:

Firefighters (incl. volunteers):

AZ, CO, FL, IL, IA, MI, NH, TX, VT, VA

Paid Firefighters:

CT, LA, SC¹

Law Enforcement:

AZ, CO, CT, FL, IL, IA, MI, SC², VT, VA

¹ Coverage is for heart/lung only

² Coverage is for cardiac-related incidents only

Minimum Employment Period:

Twelve (12) Years:

VA (cancer)

Ten (10) Years:

IL (Chicago Police), LA (cancer)

Seven (7) Years:
IL (firefighters in towns over 500,000 pop.)

Five (5) Years:
AZ, IL (firefighters in towns 5,000-500,000 pop.), LA (heart/lung), TX

None:
CO, FL, IA, MI, NH, SC, VT, VA (heart/lung)

Physical Exam Required:

In order for the presumption to apply, a physical exam *prior to employment* must show no evidence of disease:
AZ, CO, LA, NH, SC, TX

The following states require exams with certain exceptions:

- ▶ In IL, a physical exam is only required in cities with populations greater than 500,000.
- ▶ In VA, an exam is required only if requested by the employer prior to making a claim under the presumption.
- ▶ In FL, correctional officers are not required to undergo a pre-employment exam, only firefighters and other law enforcement officers.

The following states *do not* require an exam prior to employment: MI, VT.

Presumption Rebuttable (*employer* must show by competent evidence that disease/condition was not occupational):

- ▶ AZ, CO, FL, LA (only for cancer, not heart/lung), MI, NH, SC, TX, VT, VA
- ▶ In IL, the presumption is not rebuttable (i.e., it's conclusory) for all diseases except disabling cancer.

Part II: Other Questions Relating to Disease/Illness Presumption

Do you anticipate having to deal with disease/illness presumption legislation in 2006?

States saying YES:

- ▶ AK (HB31 introducing presumption law).
- ▶ FL (expansion of cancer disability presumption to firefighters).

- ▶ LA (expansion of presumption statute to include firefighter hearing loss).
- ▶ MI: *“It is unknown; however presumption proponents are beginning to understand that a cancer presumption will actually work to the detriment of police and firefighters by reducing the certainty of coverage ... health and disability insurance offers better protection at a lower cost with fewer disputes.”* Michael Forster, Administrator, MI Pool
- ▶ VT: *“The 2006 legislature is considering a bill to treat volunteer firefighters the same as full-time firefighters for the presumption.”* Dave Sichel, Administrator, VT Pool
- ▶ VA: *“There were two bills (introduced in 2005), which would have extended medical benefits to family members who contracted a condition from a first responder who had been exposed to a chemical, biological or nuclear agent. The condition would be presumed to have been contracted from the first responder. Time has passed to introduce new bills this year.”* Tim Ailsworth, Deputy Managing Director, VA Pool

If your state has a presumption law, are there problems pertaining to any of the provisions that you would like to see changed?

- ▶ CO states that even if the baseline test for Hepatitis C is negative, but the employee tests positive within 24 months, the presumption favors the employee. The statute doesn't specify how often the employee needs to be re-tested, so exposure could have occurred outside of the work environment.
- ▶ FL would like the following changes: 1) Be able to rebut the presumption based upon a “preponderance of evidence,” 2) Require minimum years uninterrupted service to qualify, 3) Terminate presumption at end of employment, and 4) Limit application to permanent total disability.
- ▶ IL would like to see all presumption laws repealed.
- ▶ LA would like to make heart/lung rebuttable (only cancer is rebuttable).
- ▶ MI: *“Most or all cancer presumption cases will force the afflicted employee to hire legal counsel. One of the common symptoms associated with cancer is fatigue, which comes and goes and varies in degree. Disputes over forcing a firefighter to continue working will be frequent. For each cancer case each year that occurs among the entire MML membership, premiums for all communities with paid fire departments will increase between 10% and 25%. The potential costs are enormous. The scientific connection between firefighting and cancer is very questionable.”* Mike Forster, Administrator, MI Pool

- ▶ SC: *“Since the law enforcement presumption is so new, we still have questions as to how it will be effectively administered. The law is not clear on the responsibility for physicals, nor is it clear what an “unusual event” is. The law makes compensation open to judicial interpretation, which means it will be difficult to determine our potential liabilities until such time there is a case that is ruled upon.”* Jeff Thompson, Risk & Safety Services Consultant, SC Pool
- ▶ VT: *“1) VLCT supports requiring disabilities claimed as job related heart attacks and heart disease to be covered by workers’ compensation, based on weight of evidence rather than by statutory mandate; 2) VLCT supports limits on heart attack or heart disease workers’ compensation coverage when a claimant engages in lifestyle choices including but not limited to smoking or substance abuse, that are scientifically shown to lead to heart attack or heart disease. This is consistent with other legislative initiatives relating to prohibiting smoking in public places and allowing healthy lifestyles health insurance discounts. Other factors, which are also shown to make an individual predisposed to heart attacks or heart disease, should also be considered; 3) VLCT believes that individuals who are covered under the workers’ compensation public safety heart attack/heart disease presumption should be subject to minimum health and physical fitness standards and periodic examination programs such as those laid out in the National Fire Protection Association (NFPA) 1500 Chapter 10 standards and OSHA 1910 standards; and 4) VLCT opposes legislation that imposes mandates on Vermont municipalities.”* Dave Sichel, Administrator, VT Pool
- ▶ VA would like to see *“A realistic rebuttal presumption as indicated in the code – not a two-pronged test, where a treating physician is not considered credible for being of the opinion that job stress cannot cause heart disease and hypertension. In my opinion, the whole heart/hypertension portion of the presumption is invalid; however we must live with the law.”* Tim Ailsworth, Deputy Managing Director, VA Pool

Are there any data or other information that you would find helpful in responding to legislative proposals to enact, expand or modify an existing statute?

Typical responses:

- ▶ Any information to counter the studies/arguments supporting increased risks of certain diseases.
- ▶ Frequency/severity data on presumption claims across the country.
- ▶ Court decisions from states with similar statutes.
- ▶ Medical statistics based on actual patient studies.
- ▶ New trends/diseases in other states.

- ▶ Statistics that show disease is not more prevalent among firefighters; anything to counter hearing loss arguments made by firefighters.
- ▶ VT would like answers to the following questions: *“What are other states doing? Have other states developed material to fight the spread of these presumptions? How do other states fund these presumptions - is it through workers’ compensation or some other mechanism? What are workers compensation rates for the positions covered by these presumptions? What is the average premium cost per employee? This should differentiate between full-time and volunteer. For example, workers’ compensation premium for a full-time firefighter in Vermont is \$3,500 to \$6,000 per year while the premium for a volunteer is \$35 per year. What kind of claim experience have states had with these presumptions? If the presumptions are rebuttable, how successful are pools at denying these claims?”* Dave Sichel, Administrator, VT Pool
- ▶ VA would like to see an impartial review of previous studies done by the fire community that questions the validity of those studies.

Have you compiled any cost information about the impact of disease/illness presumption laws in your state?

- ▶ FL, but only limited anecdotal examples.
- ▶ LA is currently gathering loss information.
- ▶ VT: *“We are successful in denying perhaps 30-50% of these claims. In many instances our denials are not appealed. We do a thorough investigation and only deny a claim if we think we can win on an appeal. When appealed we do not always win. We have had two firefighter heart attack fatalities in the last 10 years. The cost of these claims alone was close to the workers’ compensation premium we collected for volunteer firefighters during this time period. Both claims involved individuals who had had previous heart attacks and had 3+ risk factors present.”* Dave Sichel, Administrator, VT Pool
- ▶ VA provided the following information:

<u>Fund Year</u>	<u>Total Claims</u>	<u>Total Presumption Claims</u>	<u>All Total Incurred</u>	<u>Presumption Total Incurred</u>
2002	8192	30	\$13,215,308.10	\$844,965.71
2003	8364	17	\$13,856,470.75	\$397,273.67
2004	7,505	6	\$13,333,646.61	\$ 12,727.11

“Presumption claims make up less than 1/2 % of the total claims received from 1980 – 2004; however, these claims make up 9% of the total incurred for the same period.

Over the past three years, since losing many of our county members to VACO, we have seen a significant decline in presumption claims. See below for the last 3 fund years:

2002: .003% (2/5 of 1%) of claims received were presumption claims and these claims made up 6.5 % of the total incurred.

2003: .002% (1/5 of 1%) of claims received were presumption claims and these claims made up 3% of the total incurred.

2004: .0007% (1/10 of 1%) of claims received were presumption claims and these claims made up .0009% (1/10 of 1%) of the total incurred.

The two-pronged test has made it difficult to rebut the presumption, therefore, if we dispute presumption claims, it is most often due to Statute of Limitations and filing issues as opposed to attempting to rebut the presumption. Even if the treating physicians do not feel the job or job stress was a contributing factor, the Courts have found these physicians' opinions not to be credible, since they do not have a belief in the presumption statute.” Tim Ailsworth, Deputy Managing Director, VA Pool

SURVEY RESPONDENT CONTACT LIST

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