Major Change in Maine’s Workers Compensation Act - Cancer Presumption for Firefighters

After many years of relative stability, a recent change in the Workers Compensation Act has increased the volatility of the municipal Workers Compensation market. On September 12, 2009, a change in Maine’s Workers Compensation Act went into effect regarding firefighters. This change creates a presumption that certain cancers in firefighters are related to their employment as firefighters. However, this does not mean the firefighter’s cancer is automatically covered under the Maine Workers Compensation Act. In effect, this new law shifts the burden of proof from the firefighter having to prove the cancer is related to firefighting activities to the municipal employer now having to prove that the cancer is or is not related to the firefighter’s employment. As with any other part of the Workers Compensation Act, the municipal employer still has the opportunity to dispute the claim.

The Maine Workers Compensation Act, Title 39-A, Section 328-B, paragraphs one through seven now reads:

§328-B. Cancer suffered by a firefighter

Cancer suffered by a firefighter is governed by this section.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.


B. “Employed” means to be employed as an active duty firefighter or to be an active member of a volunteer fire association with no compensation other than injury and death benefits.

C. “Firefighter” means a member of a municipal fire department or volunteer fire association whose duties include the extinguishment of fires.

2. Presumption. If a firefighter who contracts cancer has met the requirements of subsections 3, 6 and 7, there is a rebuttable presumption that the firefighter contracted the cancer in the course of employment as a firefighter and as a result of that employment, that sufficient notice of the cancer has been given and that the disease was not occasioned by any willful act of the firefighter to cause the disease.

3. Medical tests. In order to be entitled to the presumption in subsection 2, during the time of employment as a firefighter, the firefighter must have undergone a standard, medically acceptable test for evidence of the cancer for which the presumption is sought or evidence of the medical conditions derived from the disease, which test failed to indicate the presence or condition of cancer.

4. Liability if services performed for more than one employer. If a firefighter who contracts cancer was employed as a firefighter by more than one employer and qualifies for the presumption under subsection 2, and that presumption has not been rebutted, the employer and insurer at the time of the last substantial exposure to the risk of the cancer are liable under this Part.

5. Retired firefighter. This section applies to a firefighter who is diagnosed with cancer within 10 years of the firefighter’s last active employment as a firefighter or prior to attaining 70 years of age, whichever occurs first.

6. Length of service. In order to qualify for the presumption under subsection 2, the firefighter must have been employed as a firefighter for 5 years and regularly responded to firefighting or emergency calls.

7. Written verification. In order to qualify for the presumption under subsection 2, a firefighter must sign a written affidavit declaring, to the best of the firefighter’s knowledge and belief, that the firefighter’s diagnosed cancer is not prevalent among the firefighter’s blood-related parents, grandparents or siblings and that the firefighter has no substantial lifetime exposures to carcinogens that are associated with the firefighter’s diagnosed cancer other than exposure through firefighting.

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Reduce Employee Injuries & Liability Exposures Through Self-Inspections

According to the U.S. Department of Labor, slips, trips and falls are the most common form of occupational accident. Have you taken a moment today to take a good look around your work zone for safety? Whether you’re sitting at your desk, strolling up the walkway to your office, or out in the field, new and old hazards are visible if you are take the time to look. A successful safety program encourages awareness and participation from all employees.

Please use these checklists to assess your work place and prevent an accident.

**Look Up**
- Is the area adequately lighted from parking area to doorway?
- Is the travel path free of seasonal overhead hazards such as falling ice and snow?
- Are chimneys, roofing materials, gutters, windows, trim, etc. in good condition?
- Is the travel path clear of dead limbs or overhead branches?
- Are entrances to the building covered to reduce the amount of water that enters the building with employees?

**Look Down**
- Is snow removed and sand or salt applied before employees come to work and offices open and then frequently thereafter?
- Have areas that drain poorly, retain snow or are habitually slippery been identified and permanent changes made to eliminate (engineer out) the hazard?
- Is the travel path free of potholes, washouts, broken edges, etc.?
- Is there uneven pavement, cracks, raised edges (greater than ½ inch high) that create a trip hazard?
- Do stairways and ramps have securely fastened handrails?
- Is the travel path clear of debris such as sand, gravel, wood chips, and mulch?

**Look Inward**
- Is snow removed and sand or salt applied before employees come to work and offices open and then frequently thereafter?
- Are stairways and ramps have securely fastened handrails?
- Are signs posted, areas restricted, etc. to protect employees and the public from known
hazards?
• Are employees encouraged or required to wear appropriate footwear for the conditions?
• Are administrative controls in place to prevent employee and public slip, trip & fall injuries through training, awareness, inspection and sound engineering and maintenance practices?

Look Elsewhere
• Review our “Preventing Slips, Trips & Falls” Safety Short on the MMA website at http://www.memun.org/RMS/LC/safetyshorts/slips.pdf
• Contact the Risk Management Services, Loss Control Department at (800) 590-5583 or speak directly with your assigned Loss Control Consultant for additional information or assistance.

WORKERS COMP (cont’d)
Like any new law, it will take some time for the Workers Compensation Board and possibly Maine’s Supreme Court to determine how the firefighter cancer presumption is to be applied. Like most legal processes, this is likely to be expensive. However, the Maine Municipal Association Workers Compensation Fund’s conservative rate planning and investment philosophy over the last 30 years has placed the Fund in a very strong position with more than ample capacity to work through this process and to pay claims as appropriate. Once the law has been defined and the parties know what to expect in terms of its application, rates can be adjusted accordingly for the firefighter class of business and the appropriate contribution charged.

Now that the cancer presumption is in effect, it may be very difficult for municipalities to find Workers Compensation coverage in the commercial insurance market. This happened before, in the 1980s, when commercial insurers walked away from municipalities and created an insurance crisis. That is why the Maine Municipal Association Workers Compensation Fund was created and why the Fund will continue to provide local governments with the stable and reliable protection that Maine communities need.

VOLUNTEER FIREFIGHTER
ACCIDENTAL DEATH & DISABILITY PROGRAM
Now available for $44.61 PER VOLUNTEER

The Volunteer Firefighter AD&D program (VFF) coverage is underwritten by The Hartford and is designed to provide insurance benefits for Fire Department activities that fall outside the coverage provided by the Maine Workers Compensation Act.

VFF is available for an annual premium of only $44.61 per volunteer firefighter.

FOR FURTHER INFORMATION PLEASE CONTACT:
Marcus Ballou or Judy Doore
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mballou@memun.org or jdoore@memun.org

Maine Municipal Association
Risk Management Services

HUB International New England, LLC

HUB International

THE HARTFORD
Congratulations Grant Recipients

The Safety Enhancement Grant and Scholarship Grant Programs offer financial incentives to members of the Maine Municipal Association Workers Compensation Fund. Safety Enhancement Grants are used to purchase safety equipment or services that assist in reducing the frequency and severity of workplace injuries.

The Maine Municipal Association has been awarding safety grants to members of the Workers Compensation Fund since 1999. The Grant program has assisted municipalities by bestowing $1.89 million through funding of 1506 Safety Enhancement Grants and 320 Scholarship Grants.

We would like to congratulate the October 2009 Grant recipients

Town of Albion
Androscoggin County Commissioners
Town of Arrowsic
City of Augusta
Town of Avon
Town of Bar Harbor
Town of Bradley
City of Brewer
Town of Bristol
Town of Bucksport
Town of Cape Elizabeth
City of Caribou
Town of Carmel
Town of East Millinocket
Town of Eddington
Town of Edgecomb
Town of Fairfield
Town of Falmouth

Town of Falmouth
City of Gardiner
Goodwin Mills Fire Department
Northern Oxford Regional Ambulance
Hampden Water District
Town of Harpswell
Hermon Volunteer Rescue Squad
Town of Kennebunkport
Kittery Water District
Town of Leeds
Town of Levant
Town of Liberty
Town of Lincoln
Linear/Sagadahoc Multicounty Jail
Mars Hill Utility District
Town of Mexico

Ed MacDonald, Loss Control Manager for Maine Municipal Association, advises that the program received 90 applications for the October 2009 grant period, and that $80,398.78 was awarded. Grants are awarded in May and October each year.

The Grant Recipients have put their funds to use by purchasing such equipment as Gas Detectors, Ergonomics Devices, Lock-out / Tagout Station, Training Aids, Material Handling Equipment, as well as Traffic Control Signage to assist in reducing the frequency and severity of workplace injuries.

For more information about any of the Maine Municipal Association Risk Management Service programs, including Safety Enhancement Grants eligibility and applications, please visit our website at www.memun.org and click on the Risk Management Services link, or call us at 1-800-590-5583.

The Municipal Risk Manager is published seasonally to inform you of developments in municipal risk management which may be of interest to you in your daily business activities. The information in these articles is general in nature and should not be considered advice for any specific risk management or legal question; you should consult with legal counsel or other qualified professional of your own choice.