Senate Bill 488

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Adds exposure to or infection by SARS-CoV-2 to definition of occupational disease for purposes of workers' compensation. Specifies presumptions as to compensability for occupational disease or occupational injury that apply to subject worker's death, disability, impairment of health, loss of work time and expenses of medical treatment or services, including diagnostic or preventive medical treatment or services, as result of exposure to SARS-CoV-2 or COVID-19.

Sunsets provisions on 180th day following expiration or termination of Governor's declaration of emergency concerning COVID-19 pandemic, including any extension of declaration.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to the compensability of COVID-19 for the purposes of workers' compensation; creating new provisions; amending ORS 656.802; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 656.

SECTION 2. (1) As used in this section:

(a) “Essential worker” means a subject worker who:

(A) At an employer's direction, must or may work at the subject worker's regular or temporarily assigned work site, other than the subject worker's residence, during a period in which a declaration of a state of emergency issued by the Governor is in effect for a location that includes the subject worker's work site; and

(B) Works in one of the following occupations:

(i) Public safety personnel, as defined in ORS 181A.355;

(ii) Peace officer, as defined in ORS 133.005;

(iii) Medical services provider, including emergency medical technician, physician, nurse, physician assistant, nursing assistant, employee of a hospital or medical clinic, pharmacy technician or employee of a home health care or long term care facility;

(iv) Employee of a retail store, including a grocery store;

(v) Employee of a public, private or charter school;

(vi) Employee of a child care facility, who cares for the dependent of another essential worker;

(vii) Agricultural worker, as defined in ORS 315.163;

(viii) Janitorial worker who provides services in locations, buildings or facilities that operate in compliance with the provisions of the March 8, 2020, declaration of emergency by the Governor, and any extensions to the declaration of emergency; or

(ix) Another occupation, if:

(I) More than 10 employees work at the subject worker's work site and 10 percent or more of the employees at the work site have tested positive or presumptively positive for

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in boldfaced type.

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exposure to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or for coronavirus disease 2019 (COVID-19); or

(II) Not more than 10 employees work at the subject worker’s work site and two or more of the employees at the work site have tested positive or presumptively positive for exposure to SARS-CoV-2 or for COVID-19.

(b) “Occupational disease” has the meaning given that term in ORS 656.802.

c) “Occupational injury” means a compensable injury that results from exposure to SARS-CoV-2 or COVID-19 arising out of and in the course of employment.

(2) A subject worker’s death, disability, impairment of health, loss of work time or expenses of medical treatment or services, including diagnostic or preventive medical treatment or services, are presumed to be compensable as an occupational disease or occupational injury if the subject worker is an essential worker and:

(a) Was exposed at work to a known or suspected source of SARS-CoV-2 or COVID-19 and the employer, a medical provider or a federal, state or local public health authority required the subject worker to remain away from the subject worker’s work site;

(b) Was exposed at work to a known or suspected source of SARS-CoV-2 or COVID-19 and becomes symptomatic for COVID-19;

(c) Becomes symptomatic for COVID-19 and receives a diagnosis of COVID-19 from a medical provider or a federal, state or local public health authority;

d) Received a laboratory-confirmed diagnosis of COVID-19 or infection by SARS-CoV-2; or

(e) Received a presumptive positive test result for COVID-19 or infection by SARS-CoV-2.

(3) An insurer or self-insured employer may rebut the presumption set forth in subsection (2) of this section, or may deny a claim filed under this section for exposure to or infection by SARS-CoV-2 or COVID-19, only with clear and convincing evidence that:

(a) The conditions identified in subsection (2)(a), (b), (c), (d) and (e) of this section do not apply to the subject worker; or

(b) A known and confirmed source of SARS-CoV-2 or COVID-19 unrelated to the subject worker’s work as an essential worker caused the subject worker to have a condition identified in subsection (2)(c), (d) or (e) of this section.

(4) Notwithstanding ORS 656.027 (6), a city that provides a disability or retirement system for firefighters and police officers by ordinance or charter that is not subject to this chapter, when accepting and processing claims from firefighters and police officers covered by the disability or retirement system, shall apply:

(a) The provisions of this section; and

(b) For claims filed under this section for exposure to or infection by SARS-CoV-2 or COVID-19, the time limitations for filing claims that are set forth in ORS 656.807 (1) and (2).

SECTION 3. ORS 656.802 is amended to read:

656.802. (1)(a) As used in this chapter, “occupational disease” means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:

(A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances.

(B) Any mental disorder, whether sudden or gradual in onset, which requires medical services
or results in physical or mental disability or death.

(C) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.

(D) **Exposure to or infection by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).**

(b) As used in this chapter, “mental disorder” includes any physical disorder caused or worsened by mental stress.

(2)(a) The worker must prove that employment conditions were the major contributing cause of the disease.

(b) If the occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease.

(c) Occupational diseases shall be subject to all of the same limitations and exclusions as accidental injuries under ORS 656.005 (7).

(d) Existence of an occupational disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings.

(e) Preexisting conditions shall be deemed causes in determining major contributing cause under this section.

(3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:

(a) The employment conditions producing the mental disorder exist in a real and objective sense.

(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.

(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.

(d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.

(4) Death, disability or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an “occupational disease.” Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter’s employment. However, any such firefighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter’s employment.

(5)(a) Death, disability or impairment of health of a nonvolunteer firefighter employed by a political division or subdivision who has completed five or more years of employment as a nonvolunteer firefighter is an occupational disease if the death, disability or impairment of health:

(A) Is caused by brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer, multiple myeloma, non-Hodgkin’s lymphoma, cancer of the throat or mouth, rectal cancer, breast cancer or leukemia;
(B) Results from the firefighter's employment as a nonvolunteer firefighter; and
(C) Is first diagnosed by a physician after July 1, 2009.

(b) Any condition or impairment of health arising under this subsection is presumed to result
from the firefighter's employment. Denial of a claim for any condition or impairment of health aris-
ing under this subsection must be on the basis of clear and convincing medical evidence that the
condition or impairment was not caused or contributed to in material part by the firefighter's em-
ployment.

(c) Notwithstanding paragraph (b) of this subsection, the presumption established under para-
graph (b) of this subsection may be rebutted by clear and convincing evidence that the use of to-
bacco by the nonvolunteer firefighter is the major contributing cause of the cancer.

(d) The presumption established under paragraph (b) of this subsection does not apply to pro-
state cancer if the cancer is first diagnosed by a physician after the firefighter has reached the age
of 55. However, nothing in this paragraph affects the right of a firefighter to establish the
compensability of prostate cancer without benefit of the presumption.

(e) The presumption established under paragraph (b) of this subsection does not apply to claims
filed more than 84 months following the termination of the nonvolunteer firefighter's employment
as a nonvolunteer firefighter. However, nothing in this paragraph affects the right of a firefighter
to establish the compensability of the cancer without benefit of the presumption.

(f) The presumption established under paragraph (b) of this subsection does not apply to volun-
teer firefighters.

(g) Nothing in this subsection affects the provisions of subsection (4) of this section.

(h) For purposes of this subsection, “nonvolunteer firefighter” means a firefighter who performs
firefighting services and receives salary, hourly wages equal to or greater than the state minimum
wage, or other compensation except for room, board, lodging, housing, meals, stipends, reimburse-
ment for expenses or nominal payments for time and travel, regardless of whether any such compen-
sation is subject to federal, state or local taxation. “Nominal payments for time and travel”
includes, but is not limited to, payments for on-call time or time spent responding to a call or similar
noncash benefits.

(6) Notwithstanding ORS 656.027 (6), any city providing a disability and retirement system by
ordinance or charter for firefighters and police officers not subject to this chapter shall apply the
presumptions established under subsection (5) of this section when processing claims for firefighters
covered by the system.

(7)(a) As used in this subsection:

(A) “Acute stress disorder” has the meaning given that term in the DSM-5.

(B) “Covered employee” means an individual who, on the date a claim is filed under this chapter:

(i) Was employed for at least five years by, or experienced a single traumatic event that satisfies
the criteria set forth in the DSM-5 as Criterion A for diagnosing post-traumatic stress disorder while
employed by, the state, a political subdivision of the state, a special government body, as defined in
ORS 174.117, or a public agency in any of these occupations:

(I) A full-time paid firefighter;

(II) A full-time paid emergency medical services provider;

(III) A full-time paid police officer;

(IV) A full-time paid corrections officer or youth correction officer;

(V) A full-time paid parole and probation officer; or

(VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator; and
(ii) Remains employed in an occupation listed in sub-subparagraph (i) of this subparagraph or separated from employment in the occupation not more than seven years previously.

(C) “DSM-5” means the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(D) “Post-traumatic stress disorder” has the meaning given that term in the DSM-5.

(E) “Psychiatrist” means a psychiatrist whom the Oregon Medical Board has licensed and certified as eligible to diagnose the conditions described in this subsection.

(F) “Psychologist” means a licensed psychologist, as defined in ORS 675.010, whom the Oregon Board of Psychology has certified as eligible to diagnose the conditions described in this subsection.

(b) Notwithstanding subsections (2) and (3) of this section, if a covered employee establishes through a preponderance of persuasive medical evidence from a psychiatrist or psychologist that the covered employee has more likely than not satisfied the diagnostic criteria in the DSM-5 for post-traumatic stress disorder or acute stress disorder, any resulting death, disability or impairment of health of the covered employee shall be presumed to be compensable as an occupational disease. An insurer or self-insured employer may rebut the presumption only by establishing through clear and convincing medical evidence that duties as a covered employee were not of real importance or great consequence in causing the diagnosed condition.

(c) An insurer’s or self-insured employer’s acceptance of a claim of post-traumatic stress disorder or acute stress disorder under this subsection, whether the acceptance was voluntary or was a result of a judgment or order, does not preclude the insurer or the self-insured employer from later denying the current compensability of the claim if exposure as a covered employee to trauma that meets the diagnostic criteria set forth as Criterion A in the DSM-5 for post-traumatic stress disorder or acute stress disorder ceases being of real importance or great consequence in causing the disability, impairment of health or a need for treatment.

(d) An insurer or self-insured employer may deny a claim under paragraph (c) of this subsection only on the basis of clear and convincing medical evidence.

(e) Notwithstanding ORS 656.027 (6), a city that provides a disability or retirement system for firefighters and police officers by ordinance or charter that is not subject to this chapter, when accepting and processing claims for death, disability or impairment of health from firefighters and police officers covered by the disability or retirement system, shall apply:

(A) The provisions of this subsection; and

(B) For claims filed under this subsection, the time limitations for filing claims that are set forth in ORS 656.807 (1) and (2).

SECTION 4. ORS 656.802, as amended by section 3 of this 2021 Act, is amended to read:

656.802. (1)(a) As used in this chapter, “occupational disease” means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:

(A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances.

(B) Any mental disorder, whether sudden or gradual in onset, which requires medical services or results in physical or mental disability or death.

(C) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.

[(D) Exposure to or infection by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).]
(b) As used in this chapter, “mental disorder” includes any physical disorder caused or worsened by mental stress.

(2)(a) The worker must prove that employment conditions were the major contributing cause of the disease.

(b) If the occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease.

(c) Occupational diseases shall be subject to all of the same limitations and exclusions as accidental injuries under ORS 656.005 (7).

(d) Existence of an occupational disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings.

(e) Preexisting conditions shall be deemed causes in determining major contributing cause under this section.

(3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:

(a) The employment conditions producing the mental disorder exist in a real and objective sense.

(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.

(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.

(d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.

(4) Death, disability or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an “occupational disease.” Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter’s employment. However, any such firefighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter’s employment.

(5)(a) Death, disability or impairment of health of a nonvolunteer firefighter employed by a political division or subdivision who has completed five or more years of employment as a nonvolunteer firefighter is an occupational disease if the death, disability or impairment of health:

(A) Is caused by brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer, multiple myeloma, non-Hodgkin’s lymphoma, cancer of the throat or mouth, rectal cancer, breast cancer or leukemia;

(B) Results from the firefighter’s employment as a nonvolunteer firefighter; and

(C) Is first diagnosed by a physician after July 1, 2009.

(b) Any condition or impairment of health arising under this subsection is presumed to result from the firefighter’s employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the
(c) Notwithstanding paragraph (b) of this subsection, the presumption established under paragraph (b) of this subsection may be rebutted by clear and convincing evidence that the use of tobacco by the nonvolunteer firefighter is the major contributing cause of the cancer.

(d) The presumption established under paragraph (b) of this subsection does not apply to prostate cancer if the cancer is first diagnosed by a physician after the firefighter has reached the age of 55. However, nothing in this paragraph affects the right of a firefighter to establish the compensability of prostate cancer without benefit of the presumption.

(e) The presumption established under paragraph (b) of this subsection does not apply to claims filed more than 84 months following the termination of the nonvolunteer firefighter’s employment as a nonvolunteer firefighter. However, nothing in this paragraph affects the right of a firefighter to establish the compensability of the cancer without benefit of the presumption.

(f) The presumption established under paragraph (b) of this subsection does not apply to volunteer firefighters.

(g) Nothing in this subsection affects the provisions of subsection (4) of this section.

(h) For purposes of this subsection, “nonvolunteer firefighter” means a firefighter who performs firefighting services and receives salary, hourly wages equal to or greater than the state minimum wage, or other compensation except for room, board, lodging, housing, meals, stipends, reimbursement for expenses or nominal payments for time and travel, regardless of whether any such compensation is subject to federal, state or local taxation. “Nominal payments for time and travel” includes, but is not limited to, payments for on-call time or time spent responding to a call or similar noncash benefits.

(6) Notwithstanding ORS 656.027 (6), any city providing a disability and retirement system by ordinance or charter for firefighters and police officers not subject to this chapter shall apply the presumptions established under subsection (5) of this section when processing claims for firefighters covered by the system.

(7)(a) As used in this subsection:

(A) “Acute stress disorder” has the meaning given that term in the DSM-5.

(B) “Covered employee” means an individual who, on the date a claim is filed under this chapter:

(i) Was employed for at least five years by, or experienced a single traumatic event that satisfies the criteria set forth in the DSM-5 as Criterion A for diagnosing post-traumatic stress disorder while employed by, the state, a political subdivision of the state, a special government body, as defined in ORS 174.117, or a public agency in any of these occupations:

(I) A full-time paid firefighter;

(II) A full-time paid emergency medical services provider;

(III) A full-time paid police officer;

(IV) A full-time paid corrections officer or youth correction officer;

(V) A full-time paid parole and probation officer; or

(VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator; and

(ii) Remains employed in an occupation listed in sub-subparagraph (i) of this subparagraph or separated from employment in the occupation not more than seven years previously.

(C) “DSM-5” means the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(D) “Post-traumatic stress disorder” has the meaning given that term in the DSM-5.
(E) “Psychiatrist” means a psychiatrist whom the Oregon Medical Board has licensed and certified as eligible to diagnose the conditions described in this subsection.

(F) “Psychologist” means a licensed psychologist, as defined in ORS 675.010, whom the Oregon Board of Psychology has certified as eligible to diagnose the conditions described in this subsection.

(b) Notwithstanding subsections (2) and (3) of this section, if a covered employee establishes through a preponderance of persuasive medical evidence from a psychiatrist or psychologist that the covered employee has more likely than not satisfied the diagnostic criteria in the DSM-5 for post-traumatic stress disorder or acute stress disorder, any resulting death, disability or impairment of health of the covered employee shall be presumed to be compensable as an occupational disease. An insurer or self-insured employer may rebut the presumption only by establishing through clear and convincing medical evidence that duties as a covered employee were not of real importance or great consequence in causing the diagnosed condition.

c) An insurer’s or self-insured employer’s acceptance of a claim of post-traumatic stress disorder or acute stress disorder under this subsection, whether the acceptance was voluntary or was a result of a judgment or order, does not preclude the insurer or the self-insured employer from later denying the current compensability of the claim if exposure as a covered employee to trauma that meets the diagnostic criteria set forth as Criterion A in the DSM-5 for post-traumatic stress disorder or acute stress disorder ceases being of real importance or great consequence in causing the disability, impairment of health or a need for treatment.

d) An insurer or self-insured employer may deny a claim under paragraph (c) of this subsection only on the basis of clear and convincing medical evidence.

e) Notwithstanding ORS 656.027 (6), a city that provides a disability or retirement system for firefighters and police officers by ordinance or charter that is not subject to this chapter, when accepting and processing claims for death, disability or impairment of health from firefighters and police officers covered by the disability or retirement system, shall apply:

(A) The provisions of this subsection; and

(B) For claims filed under this subsection, the time limitations for filing claims that are set forth in ORS 656.807 (1) and (2).

SECTION 5. Section 2 of this 2021 Act and the amendments to ORS 656.802 by section 3 of this 2021 Act apply to claims for occupational disease or occupational injury that are submitted on and after the effective date of this 2021 Act and to claims for occupational disease or occupational injury that were submitted and were pending but for which compensability was not yet determined before the effective date of this 2021 Act.

SECTION 6. The amendments to ORS 656.802 by section 4 of this 2021 Act become operative on the 180th day following the expiration or termination of the Governor’s March 8, 2020, declaration of emergency concerning the COVID-19 pandemic. For purposes of this section, the period in which the declaration of emergency is in effect includes any extensions of the declaration of emergency.

SECTION 7. Section 2 of this 2021 Act is repealed on the 180th day following the expiration or termination of the Governor’s March 8, 2020, declaration of emergency concerning the COVID-19 pandemic. For purposes of this section, the period in which the declaration of emergency is in effect includes any extensions of the declaration of emergency.

SECTION 8. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.