

# Senate Bill 388

Sponsored by Senators DEMBROW, GORSEK (Presession filed.)

## SUMMARY

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**.

Defines "covered employee" as including employees of Department of Human Services who work in stabilization and crisis unit for purposes of specifying certain presumptions as to compensability of covered employee's claim of benefits under workers' compensation law for death, disability or impairment of health.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to occupational diseases for purposes of worker's compensation for certain workers; creat-  
3 ing new provisions; amending ORS 656.802; and prescribing an effective date.

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

5 **SECTION 1.** ORS 656.802 is amended to read:

6 656.802. (1)(a) As used in this chapter, "occupational disease" means any disease or infection  
7 arising out of and in the course of employment caused by substances or activities to which an em-  
8 ployee is not ordinarily subjected or exposed other than during a period of regular actual employ-  
9 ment therein, and which requires medical services or results in disability or death, including:

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

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

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

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

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

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

23 (c) Occupational diseases shall be subject to all of the same limitations and exclusions as acci-  
24 dental injuries under ORS 656.005 (7).

25 (d) Existence of an occupational disease or worsening of a preexisting disease must be estab-  
26 lished by medical evidence supported by objective findings.

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

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

**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.

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

2 (b) The employment conditions producing the mental disorder are conditions other than condi-  
3 tions generally inherent in every working situation or reasonable disciplinary, corrective or job  
4 performance evaluation actions by the employer, or cessation of employment or employment deci-  
5 sions attendant upon ordinary business or financial cycles.

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

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

10 (4) Death, disability or impairment of health of firefighters of any political division who have  
11 completed five or more years of employment as firefighters, caused by any disease of the lungs or  
12 respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment  
13 as firefighters is an "occupational disease." Any condition or impairment of health arising under this  
14 subsection shall be presumed to result from a firefighter's employment. However, any such fire-  
15 fighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto,  
16 which failed to reveal any evidence of such condition or impairment of health which preexisted  
17 employment. Denial of a claim for any condition or impairment of health arising under this sub-  
18 section must be on the basis of clear and convincing medical evidence that the cause of the condi-  
19 tion or impairment is unrelated to the firefighter's employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (I) A full-time paid firefighter;

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

22 (III) A full-time paid police officer;

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

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

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

26 **(VII) An employee of the Department of Human Services who works in the stabilization**  
27 **and crisis unit; and**

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

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

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

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

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

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

45 (c) An insurer’s or self-insured employer’s acceptance of a claim of post-traumatic stress disorder

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

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

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

13 (A) The provisions of this subsection; and

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

16 **SECTION 2. The amendments to ORS 656.802 by section 1 of this 2021 Act apply only to**  
17 **claims for benefits that are filed on or after the effective date of this 2021 Act.**

18 **SECTION 3. This 2021 Act takes effect on the 91st day after the date on which the 2021**  
19 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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