



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5532

Introduced 2/15/2012, by Rep. Dwight Kay

SYNOPSIS AS INTRODUCED:

820 ILCS 305/6
820 ILCS 310/1

from Ch. 48, par. 138.6
from Ch. 48, par. 172.36

Amends provisions of the Workers' Compensation Act and the Workers' Occupational Diseases Act creating certain rebuttable presumptions regarding certain conditions of a firefighter, emergency medical technician (EMT), or paramedic by: deleting language including bloodborne pathogens and tuberculosis as conditions to which those provisions apply; adding language making those provisions applicable to an EMT or paramedic cross trained as a firefighter (rather than any EMT or paramedic); and making other changes in the wording of those provisions. Adds language providing that any condition or impairment of health of an employee employed as a firefighter, EMT, or paramedic resulting directly or indirectly from any bloodborne pathogen or tuberculosis resulting in any disability to the employee shall be rebuttably presumed to arise out of and in the course of the employee's firefighting, EMT, or paramedic employment and shall be rebuttably presumed to be causally connected to the hazards or exposures of the employment, subject to specified conditions.

LRB097 18525 WGH 63756 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Section 6 as follows:

6 (820 ILCS 305/6) (from Ch. 48, par. 138.6)

7 Sec. 6. (a) Every employer within the provisions of this
8 Act, shall, under the rules and regulations prescribed by the
9 Commission, post printed notices in their respective places of
10 employment in such number and at such places as may be
11 determined by the Commission, containing such information
12 relative to this Act as in the judgment of the Commission may
13 be necessary to aid employees to safeguard their rights under
14 this Act in event of injury.

15 In addition thereto, the employer shall post in a
16 conspicuous place on the place of the employment a printed or
17 typewritten notice stating whether he is insured or whether he
18 has qualified and is operating as a self-insured employer. In
19 the event the employer is insured, the notice shall state the
20 name and address of his insurance carrier, the number of the
21 insurance policy, its effective date and the date of
22 termination. In the event of the termination of the policy for
23 any reason prior to the termination date stated, the posted

1 notice shall promptly be corrected accordingly. In the event
2 the employer is operating as a self-insured employer the notice
3 shall state the name and address of the company, if any,
4 servicing the compensation payments of the employer, and the
5 name and address of the person in charge of making compensation
6 payments.

7 (b) Every employer subject to this Act shall maintain
8 accurate records of work-related deaths, injuries and illness
9 other than minor injuries requiring only first aid treatment
10 and which do not involve medical treatment, loss of
11 consciousness, restriction of work or motion, or transfer to
12 another job and file with the Commission, in writing, a report
13 of all accidental deaths, injuries and illnesses arising out of
14 and in the course of the employment resulting in the loss of
15 more than 3 scheduled work days. In the case of death such
16 report shall be made no later than 2 working days following the
17 accidental death. In all other cases such report shall be made
18 between the 15th and 25th of each month unless required to be
19 made sooner by rule of the Commission. In case the injury
20 results in permanent disability, a further report shall be made
21 as soon as it is determined that such permanent disability has
22 resulted or will result from the injury. All reports shall
23 state the date of the injury, including the time of day or
24 night, the nature of the employer's business, the name,
25 address, age, sex, conjugal condition of the injured person,
26 the specific occupation of the injured person, the direct cause

1 of the injury and the nature of the accident, the character of
2 the injury, the length of disability, and in case of death the
3 length of disability before death, the wages of the injured
4 person, whether compensation has been paid to the injured
5 person, or to his or her legal representative or his heirs or
6 next of kin, the amount of compensation paid, the amount paid
7 for physicians', surgeons' and hospital bills, and by whom
8 paid, and the amount paid for funeral or burial expenses if
9 known. The reports shall be made on forms and in the manner as
10 prescribed by the Commission and shall contain such further
11 information as the Commission shall deem necessary and require.
12 The making of these reports releases the employer from making
13 such reports to any other officer of the State and shall
14 satisfy the reporting provisions as contained in the "Health
15 and Safety Act" and "An Act in relation to safety inspections
16 and education in industrial and commercial establishments and
17 to repeal an Act therein named", approved July 18, 1955, as now
18 or hereafter amended. The reports filed with the Commission
19 pursuant to this Section shall be made available by the
20 Commission to the Director of Labor or his representatives and
21 to all other departments of the State of Illinois which shall
22 require such information for the proper discharge of their
23 official duties. Failure to file with the Commission any of the
24 reports required in this Section is a petty offense.

25 Except as provided in this paragraph, all reports filed
26 hereunder shall be confidential and any person having access to

1 such records filed with the Illinois Workers' Compensation
2 Commission as herein required, who shall release any
3 information therein contained including the names or otherwise
4 identify any persons sustaining injuries or disabilities, or
5 give access to such information to any unauthorized person,
6 shall be subject to discipline or discharge, and in addition
7 shall be guilty of a Class B misdemeanor. The Commission shall
8 compile and distribute to interested persons aggregate
9 statistics, taken from the reports filed hereunder. The
10 aggregate statistics shall not give the names or otherwise
11 identify persons sustaining injuries or disabilities or the
12 employer of any injured or disabled person.

13 (c) Notice of the accident shall be given to the employer
14 as soon as practicable, but not later than 45 days after the
15 accident. Provided:

16 (1) In case of the legal disability of the employee or any
17 dependent of a deceased employee who may be entitled to
18 compensation under the provisions of this Act, the limitations
19 of time by this Act provided do not begin to run against such
20 person under legal disability until a guardian has been
21 appointed.

22 (2) In cases of injuries sustained by exposure to
23 radiological materials or equipment, notice shall be given to
24 the employer within 90 days subsequent to the time that the
25 employee knows or suspects that he has received an excessive
26 dose of radiation.

1 No defect or inaccuracy of such notice shall be a bar to
2 the maintenance of proceedings on arbitration or otherwise by
3 the employee unless the employer proves that he is unduly
4 prejudiced in such proceedings by such defect or inaccuracy.

5 Notice of the accident shall give the approximate date and
6 place of the accident, if known, and may be given orally or in
7 writing.

8 (d) Every employer shall notify each injured employee who
9 has been granted compensation under the provisions of Section 8
10 of this Act of his rights to rehabilitation services and advise
11 him of the locations of available public rehabilitation centers
12 and any other such services of which the employer has
13 knowledge.

14 In any case, other than one where the injury was caused by
15 exposure to radiological materials or equipment or asbestos
16 unless the application for compensation is filed with the
17 Commission within 3 years after the date of the accident, where
18 no compensation has been paid, or within 2 years after the date
19 of the last payment of compensation, where any has been paid,
20 whichever shall be later, the right to file such application
21 shall be barred.

22 In any case of injury caused by exposure to radiological
23 materials or equipment or asbestos, unless application for
24 compensation is filed with the Commission within 25 years after
25 the last day that the employee was employed in an environment
26 of hazardous radiological activity or asbestos, the right to

1 file such application shall be barred.

2 If in any case except one where the injury was caused by
3 exposure to radiological materials or equipment or asbestos,
4 the accidental injury results in death application for
5 compensation for death may be filed with the Commission within
6 3 years after the date of death where no compensation has been
7 paid or within 2 years after the date of the last payment of
8 compensation where any has been paid, whichever shall be later,
9 but not thereafter.

10 If an accidental injury caused by exposure to radiological
11 material or equipment or asbestos results in death within 25
12 years after the last day that the employee was so exposed
13 application for compensation for death may be filed with the
14 Commission within 3 years after the date of death, where no
15 compensation has been paid, or within 2 years after the date of
16 the last payment of compensation where any has been paid,
17 whichever shall be later, but not thereafter.

18 (e) Any contract or agreement made by any employer or his
19 agent or attorney with any employee or any other beneficiary of
20 any claim under the provisions of this Act within 7 days after
21 the injury shall be presumed to be fraudulent.

22 (f) Any condition or impairment of health of an employee
23 employed as a firefighter, ~~or an~~ emergency medical technician
24 (EMT) cross trained as a firefighter, ~~or a~~ paramedic cross
25 trained as a firefighter which results directly or indirectly
26 from any ~~bloodborne pathogen~~, lung or respiratory disease or

1 condition, heart or vascular disease or condition,
2 hypertension, ~~tuberculosis,~~ or cancer resulting in any
3 disability (temporary, permanent, total, or partial) to such
4 ~~the~~ employee shall be rebuttably presumed to arise out of and
5 in the course of such ~~the~~ employee's firefighting, EMT, or
6 paramedic employment and, further, shall be rebuttably
7 presumed to be causally connected to the hazards or exposures
8 of the employment. This presumption shall also apply to any
9 hernia or hearing loss suffered by such an employee ~~employed as~~
10 ~~a firefighter, EMT, or paramedic.~~ However, this presumption
11 shall not apply to any employee who has been employed as a
12 firefighter, EMT, or paramedic for less than 5 years at the
13 time he or she files an Application for Adjustment of Claim
14 concerning this condition or impairment with the Illinois
15 Workers' Compensation Commission. The Finding and Decision of
16 the Illinois Workers' Compensation Commission under only the
17 rebuttable presumption provision of this subsection shall not
18 be admissible or be deemed res judicata in any disability claim
19 under the Illinois Pension Code arising out of the same medical
20 condition; however, this sentence makes no change to the law
21 set forth in Krohe v. City of Bloomington, 204 Ill.2d 392.

22 (g) Any condition or impairment of health of an employee
23 employed as a firefighter, emergency medical technician (EMT),
24 or paramedic which results directly or indirectly from any
25 bloodborne pathogen or tuberculosis resulting in any
26 disability (temporary, permanent, total, or partial) to the

1 employee shall be rebuttably presumed to arise out of and in
2 the course of the employee's firefighting, EMT, or paramedic
3 employment and, further, shall be rebuttably presumed to be
4 causally connected to the hazards or exposures of the
5 employment. However, this presumption shall not apply to any
6 employee who has been employed as a firefighter, EMT, or
7 paramedic for less than 5 years at the time he or she files an
8 Application for Adjustment of Claim concerning this condition
9 or impairment with the Illinois Workers' Compensation
10 Commission. The Finding and Decision of the Illinois Workers'
11 Compensation Commission under only the rebuttable presumption
12 provision of this paragraph shall not be admissible or be
13 deemed res judicata in any disability claim under the Illinois
14 Pension Code arising out of the same medical condition;
15 however, this sentence makes no change to the law set forth in
16 Krohe v. City of Bloomington, 204 Ill.2d 392.

17 (Source: P.A. 95-316, eff. 1-1-08.)

18 Section 10. The Workers' Occupational Diseases Act is
19 amended by changing Section 1 as follows:

20 (820 ILCS 310/1) (from Ch. 48, par. 172.36)

21 Sec. 1. This Act shall be known and may be cited as the
22 "Workers' Occupational Diseases Act".

23 (a) The term "employer" as used in this Act shall be
24 construed to be:

1 1. The State and each county, city, town, township,
2 incorporated village, school district, body politic, or
3 municipal corporation therein.

4 2. Every person, firm, public or private corporation,
5 including hospitals, public service, eleemosynary,
6 religious or charitable corporations or associations, who
7 has any person in service or under any contract for hire,
8 express or implied, oral or written.

9 3. Where an employer operating under and subject to the
10 provisions of this Act loans an employee to another such
11 employer and such loaned employee sustains a compensable
12 occupational disease in the employment of such borrowing
13 employer and where such borrowing employer does not provide
14 or pay the benefits or payments due such employee, such
15 loaning employer shall be liable to provide or pay all
16 benefits or payments due such employee under this Act and
17 as to such employee the liability of such loaning and
18 borrowing employers shall be joint and several, provided
19 that such loaning employer shall in the absence of
20 agreement to the contrary be entitled to receive from such
21 borrowing employer full reimbursement for all sums paid or
22 incurred pursuant to this paragraph together with
23 reasonable attorneys' fees and expenses in any hearings
24 before the Illinois Workers' Compensation Commission or in
25 any action to secure such reimbursement. Where any benefit
26 is provided or paid by such loaning employer, the employee

1 shall have the duty of rendering reasonable co-operation in
2 any hearings, trials or proceedings in the case, including
3 such proceedings for reimbursement.

4 Where an employee files an Application for Adjustment
5 of Claim with the Illinois Workers' Compensation
6 Commission alleging that his or her claim is covered by the
7 provisions of the preceding paragraph, and joining both the
8 alleged loaning and borrowing employers, they and each of
9 them, upon written demand by the employee and within 7 days
10 after receipt of such demand, shall have the duty of filing
11 with the Illinois Workers' Compensation Commission a
12 written admission or denial of the allegation that the
13 claim is covered by the provisions of the preceding
14 paragraph and in default of such filing or if any such
15 denial be ultimately determined not to have been bona fide
16 then the provisions of Paragraph K of Section 19 of this
17 Act shall apply.

18 An employer whose business or enterprise or a
19 substantial part thereof consists of hiring, procuring or
20 furnishing employees to or for other employers operating
21 under and subject to the provisions of this Act for the
22 performance of the work of such other employers and who
23 pays such employees their salary or wage notwithstanding
24 that they are doing the work of such other employers shall
25 be deemed a loaning employer within the meaning and
26 provisions of this Section.

1 (b) The term "employee" as used in this Act, shall be
2 construed to mean:

3 1. Every person in the service of the State, county,
4 city, town, township, incorporated village or school
5 district, body politic or municipal corporation therein,
6 whether by election, appointment or contract of hire,
7 express or implied, oral or written, including any official
8 of the State, or of any county, city, town, township,
9 incorporated village, school district, body politic or
10 municipal corporation therein and except any duly
11 appointed member of the fire department in any city whose
12 population exceeds 500,000 according to the last Federal or
13 State census, and except any member of a fire insurance
14 patrol maintained by a board of underwriters in this State.
15 One employed by a contractor who has contracted with the
16 State, or a county, city, town, township, incorporated
17 village, school district, body politic or municipal
18 corporation therein, through its representatives, shall
19 not be considered as an employee of the State, county,
20 city, town, township, incorporated village, school
21 district, body politic or municipal corporation which made
22 the contract.

23 2. Every person in the service of another under any
24 contract of hire, express or implied, oral or written, who
25 contracts an occupational disease while working in the
26 State of Illinois, or who contracts an occupational disease

1 while working outside of the State of Illinois but where
2 the contract of hire is made within the State of Illinois,
3 and any person whose employment is principally localized
4 within the State of Illinois, regardless of the place where
5 the disease was contracted or place where the contract of
6 hire was made, including aliens, and minors who, for the
7 purpose of this Act, except Section 3 hereof, shall be
8 considered the same and have the same power to contract,
9 receive payments and give quittances therefor, as adult
10 employees. An employee or his or her dependents under this
11 Act who shall have a cause of action by reason of an
12 occupational disease, disablement or death arising out of
13 and in the course of his or her employment may elect or
14 pursue his or her remedy in the State where the disease was
15 contracted, or in the State where the contract of hire is
16 made, or in the State where the employment is principally
17 localized.

18 (c) "Commission" means the Illinois Workers' Compensation
19 Commission created by the Workers' Compensation Act, approved
20 July 9, 1951, as amended.

21 (d) In this Act the term "Occupational Disease" means a
22 disease arising out of and in the course of the employment or
23 which has become aggravated and rendered disabling as a result
24 of the exposure of the employment. Such aggravation shall arise
25 out of a risk peculiar to or increased by the employment and
26 not common to the general public.

1 A disease shall be deemed to arise out of the employment if
2 there is apparent to the rational mind, upon consideration of
3 all the circumstances, a causal connection between the
4 conditions under which the work is performed and the
5 occupational disease. The disease need not to have been
6 foreseen or expected but after its contraction it must appear
7 to have had its origin or aggravation in a risk connected with
8 the employment and to have flowed from that source as a
9 rational consequence.

10 An employee shall be conclusively deemed to have been
11 exposed to the hazards of an occupational disease when, for any
12 length of time however short, he or she is employed in an
13 occupation or process in which the hazard of the disease
14 exists; provided however, that in a claim of exposure to atomic
15 radiation, the fact of such exposure must be verified by the
16 records of the central registry of radiation exposure
17 maintained by the Department of Public Health or by some other
18 recognized governmental agency maintaining records of such
19 exposures whenever and to the extent that the records are on
20 file with the Department of Public Health or the agency.

21 Any injury to or disease or death of an employee arising
22 from the administration of a vaccine, including without
23 limitation smallpox vaccine, to prepare for, or as a response
24 to, a threatened or potential bioterrorist incident to the
25 employee as part of a voluntary inoculation program in
26 connection with the person's employment or in connection with

1 any governmental program or recommendation for the inoculation
2 of workers in the employee's occupation, geographical area, or
3 other category that includes the employee is deemed to arise
4 out of and in the course of the employment for all purposes
5 under this Act. This paragraph added by Public Act 93-829 is
6 declarative of existing law and is not a new enactment.

7 The employer liable for the compensation in this Act
8 provided shall be the employer in whose employment the employee
9 was last exposed to the hazard of the occupational disease
10 claimed upon regardless of the length of time of such last
11 exposure, except, in cases of silicosis or asbestosis, the only
12 employer liable shall be the last employer in whose employment
13 the employee was last exposed during a period of 60 days or
14 more after the effective date of this Act, to the hazard of
15 such occupational disease, and, in such cases, an exposure
16 during a period of less than 60 days, after the effective date
17 of this Act, shall not be deemed a last exposure. If a miner
18 who is suffering or suffered from pneumoconiosis was employed
19 for 10 years or more in one or more coal mines there shall,
20 effective July 1, 1973 be a rebuttable presumption that his or
21 her pneumoconiosis arose out of such employment.

22 If a deceased miner was employed for 10 years or more in
23 one or more coal mines and died from a respirable disease there
24 shall, effective July 1, 1973, be a rebuttable presumption that
25 his or her death was due to pneumoconiosis.

26 Any condition or impairment of health of an employee

1 employed as a firefighter, ~~or an~~ emergency medical technician
2 (EMT) cross trained as a firefighter, ~~or a~~ paramedic cross
3 trained as a firefighter which results directly or indirectly
4 from any ~~bloodborne pathogen~~, lung or respiratory disease or
5 condition, heart or vascular disease or condition,
6 hypertension, ~~tuberculosis~~, or cancer resulting in any
7 disability (temporary, permanent, total, or partial) to such
8 ~~the~~ employee shall be rebuttably presumed to arise out of and
9 in the course of such ~~the~~ employee's firefighting, EMT, or
10 paramedic employment and, further, shall be rebuttably
11 presumed to be causally connected to the hazards or exposures
12 of the employment. This presumption shall also apply to any
13 hernia or hearing loss suffered by such an employee ~~employed as~~
14 ~~a firefighter, EMT, or paramedic~~. However, this presumption
15 shall not apply to any employee who has been employed as a
16 firefighter, EMT, or paramedic for less than 5 years at the
17 time he or she files an Application for Adjustment of Claim
18 concerning this condition or impairment with the Illinois
19 Workers' Compensation Commission. The Finding and Decision of
20 the Illinois Workers' Compensation Commission under only the
21 rebuttable presumption provision of this paragraph shall not be
22 admissible or be deemed res judicata in any disability claim
23 under the Illinois Pension Code arising out of the same medical
24 condition; however, this sentence makes no change to the law
25 set forth in Krohe v. City of Bloomington, 204 Ill.2d 392.

26 The insurance carrier liable shall be the carrier whose

1 policy was in effect covering the employer liable on the last
2 day of the exposure rendering such employer liable in
3 accordance with the provisions of this Act.

4 Any condition or impairment of health of an employee
5 employed as a firefighter, emergency medical technician (EMT),
6 or paramedic which results directly or indirectly from any
7 bloodborne pathogen or tuberculosis resulting in any
8 disability (temporary, permanent, total, or partial) to the
9 employee shall be rebuttably presumed to arise out of and in
10 the course of the employee's firefighting, EMT, or paramedic
11 employment and, further, shall be rebuttably presumed to be
12 causally connected to the hazards or exposures of the
13 employment. However, this presumption shall not apply to any
14 employee who has been employed as a firefighter, EMT, or
15 paramedic for less than 5 years at the time he or she files an
16 Application for Adjustment of Claim concerning this condition
17 or impairment with the Illinois Workers' Compensation
18 Commission. The Finding and Decision of the Illinois Workers'
19 Compensation Commission under only the rebuttable presumption
20 provision of this paragraph shall not be admissible or be
21 deemed res judicata in any disability claim under the Illinois
22 Pension Code arising out of the same medical condition;
23 however, this sentence makes no change to the law set forth in
24 Krohe v. City of Bloomington, 204 Ill.2d 392.

25 (e) "Disablement" means an impairment or partial
26 impairment, temporary or permanent, in the function of the body

1 or any of the members of the body, or the event of becoming
2 disabled from earning full wages at the work in which the
3 employee was engaged when last exposed to the hazards of the
4 occupational disease by the employer from whom he or she claims
5 compensation, or equal wages in other suitable employment; and
6 "disability" means the state of being so incapacitated.

7 (f) No compensation shall be payable for or on account of
8 any occupational disease unless disablement, as herein
9 defined, occurs within two years after the last day of the last
10 exposure to the hazards of the disease, except in cases of
11 occupational disease caused by berylliosis or by the inhalation
12 of silica dust or asbestos dust and, in such cases, within 3
13 years after the last day of the last exposure to the hazards of
14 such disease and except in the case of occupational disease
15 caused by exposure to radiological materials or equipment, and
16 in such case, within 25 years after the last day of last
17 exposure to the hazards of such disease.

18 (Source: P.A. 95-316, eff. 1-1-08; 95-331, eff. 8-21-07.)