



Presumptions! Presumptions! Presumptions!

Watch out for WC statutory presumptions when resolving the injury or illness case for a first responder

By JESSICA E. BERLAT
AND EUSTACE DE SAINT PHALLE

The workers' compensation system is one of the nation's oldest social insurance programs. It was created as a trade-off between employers and employees. The idea being that when employees were injured on the job, rather than having to proceed through the arduous civil litigation legal process, an employee could more expeditiously receive benefits through the workers' compensation system.

Designed as a benefit delivery system, a qualified injured worker is provided access to medical treatment, partial coverage for time missed from work due to their injury, compensation for permanent disability impairments, and potentially, vocational rehabilitation benefits. Employers, in turn, while giving up some common law defenses to civil actions, are able to limit their liability.

As provided in the California Constitution, the legislature was given the power to enforce, "a complete system of workers' compensation including adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any part." (California Constitution, article XIV, section 4.)

Many would argue that the workers' compensation system in practice, and especially today, does not achieve the goals it set out to accomplish. Unfortunately, when an employee is injured on the job, they are preempted from filing a civil litigation claim against their employer and must proceed through the workers' compensation system. Under California law, the workers' compensation system is usually the exclusive remedy against an employer. This is called the Workers' Compensation Exclusive Remedy Rule. (Lab. Code, § 3602.) There are limited exceptions to this rule, such as employer negligence, dual capacity, fraudulent concealment, etc.

As explained above, this was designed as a trade-off. The workers' compensation system is limited in the types of recovery available, but the discovery process and burden of proof is much less cumbersome than the traditional civil litigation route. This is because workers' compensation is viewed as being the responsibility, not the fault, of the employer.

Labor Code section 3202 provides California workers' compensation laws "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment."

First responders and evidentiary presumptions

When it comes to first responders, the legislature eased the burden of proving industrial causation and issues of apportionment for certain public

employees that provide vital and hazardous services by establishing a series of evidentiary presumptions.

Labor Code presumptions illustrate the importance of preserving the public policy of this long-standing social insurance program, by shifting the burden of proof to the defendant employer. They provide additional protection to those that suffer an industrially related illness or injury.

Most presumptions were enacted as recognition that first responders work in an uncontrolled work environment, which leads to not only higher risk of a specific injury, but also cumulative injuries due to exposure to dangerous chemicals, carcinogens, and critical incidents.

When the general public thinks of an injured first responder, the first thing that comes to mind is danger of being critically injured or killed responding to a fire or incident. However, for firefighters and police officers, some of the more common injuries are invisible; and include being at higher risk of heart disease, cancer and PTSD than the general public.

Labor Code presumptions are a necessary remedial tool to ensure the policy of extending protection to injured employees is realized. Without these presumptions, the injured worker would be hard pressed to directly link these medical conditions to their employment due to the manifestation of the injuries themselves and the fact that many of these conditions (heart disease and cancer) occur throughout the general population.



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By design, presumptions shift the burden of proof from the employee to the employer/insurance company. If an injured employee sustains one of the presumptive injuries as outlined in the Labor Code, and that injury manifests itself during the term of employment or within the statutory time frame post-retirement, their claim should be presumed compensable. It is then the defendant employer's burden to rebut that presumption.

First responder work-related illness and injury

When it comes to first responders, Labor Code presumptions cover the following work-related illnesses/injuries: heart trouble, hernia, pneumonia, cancer, tuberculous, bloodborne infections/MRSA, biochemical substances, meningitis, Lyme disease, low back (public safety only), post-traumatic stress disorder, and previously, COVID-19.

It would be impossible to cover all of the presumptions in any detail in one article. Rather, this article will briefly explore some of the more prevalent injuries for first responders including the heart presumption, cancer presumption, low back (duty belt) presumption and post-traumatic stress disorder presumption.

Heart/cardiovascular presumption

Labor Code section 3212 provides a presumption for heart trouble, hernia and pneumonia. Injury to heart/cardiovascular system is unfortunately a fairly common injury for a first responder. However, in order to fall under the presumption, an injured worker must demonstrate they have heart damage. Heart damage requires proof that there has been some form of end organ damage to the anatomical structure of the heart. One of the benefits of this presumption is that it extends post-retirement; extending three months for every year of service up to five years

post-retirement. Another legal benefit of this presumption is the anti-attribution clause found within Labor Code section 3212. This clause prevents the defendant employer from apportioning any permanent impairment for this injury to any disease existing prior to that development of manifestation.

Cancer presumption

Labor Code section 3212.1 provides a presumption for cancer. Stating as follows, "cancer developing or manifesting itself during the period of employment shall be presumed to arise out of and in the course of employment." In order to fall under the presumption, an injured worker must show exposure to an International Agency for Research on Cancer (IARC) Class 1 carcinogen. In July 2022, IARC announced the classification of occupational exposure as a firefighter as a Group 1 carcinogen. Once an injured worker has identified exposure to a known carcinogen during the period of employment, the presumption applies. Like the heart presumption, this extends post-retirement. Labor Code section 3212.1 extends three months for every year of service up to 10 years.

Duty belt/Low back presumption

Labor Code section 3213.2 provides a presumption for duty belt/low back. This presumption applies to sworn officers who have been employed for at least five years as a peace officer on a regular full-time salary and who have been required to wear a duty belt. Labor Code section 3213.2 provides that a lower back impairment will be presumed to arise out of and in the course of employment for qualified applicants. Like many of the other presumptions, this presumption extends post-retirement; three months for every year of service up to five years. Like some of the other presumptions, Labor Code section 3213.2 also has an anti-attribution clause.

Post-traumatic stress injury presumption

Labor Code section 3212.15 provides a presumption for Post-Traumatic Stress Disorder. This is a relatively new presumption that became effective as of January 1, 2020 and remains in effect until January 1, 2025. The PTSD presumption requires a minimum of six months of service (with exception for sudden/extraordinary event). It extends three months for every year of service up to five years. Interestingly, this presumption does not have an anti-attribution clause, so defendants can (and do) go to great lengths to prove non-industrial factors in order to get apportionment of permanent disability due to non-industrial factors.

Practice pointer: While presumptions offer a necessary legal advantage not otherwise found in the traditional civil litigation realm, workers' compensation benefits are limited and inadequate to cover all damages. Both workers' compensation attorneys and personal injury-attorneys need to be aware of how both systems operate to better inform their clients as to the all-potential legal avenues for recovery, and potential lien and credit issues.

Conclusion

The first responder Labor Code presumptions provide a great illustration of the trade-off that was made a long time ago between employers and employees. They highlight the continued effort and public policy in keeping this social insurance program as a necessary balancing act between employees and employers.

Presumptions often provide a great deal of necessary protection for first responders when they are injured. However, one must not assume that just because they are in place, employers are quicker to accept the injury and provide care. In practice, even with the presumptions,



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these cases are often the most contested. This is likely because they tend to encompass the more complex, serious injuries with substantial financial liability for employers.



Berlat

Jessica E. Berlat is an associate in the Rains Lucia Stern St. Phalle & Silver, PC Workers'

Compensation Practice Group. Jessica's practice primarily focuses on the representation of first responders, police officers and firefighters. Jessica specializes in handling complicated injuries often contested as industrially related. She has expertise in Labor Code presumptions, Northern California Alternative Dispute Resolution programs, and workers' compensation claims and retirement. Jessica has successfully assisted many qualified clients through the disability retirement pension process.



de Saint Phalle

Eustace de Saint Phalle is a principal with Rains Lucia Stern St. Phalle & Silver, PC ("RLS") in San Francisco. Eustace leads the RLS Personal Injury and Workers' Compensation Groups and has established himself as one of California's top injury trial lawyers. Eustace specializes in third-party crossover cases.