

The Thomas P. Canzanella 21st Century First Responders Protection Act: A Basic Guide

Introduction

There have long been special classes of beneficiaries under the Workers' Compensation Act, who must be identified by litigants at the inception of the case. Volunteer firefighters and auxiliary police have special rights to a presumption of wage & rate under N.J.S.A. 34:15-75. Firefighters can enjoy a presumption of causal relationship in occupational respiratory cases, under many circumstances, pursuant to N.J.S.A. 34:15-43.2. Police officers commuting from home to an emergency can be covered portal-to-portal under N.J.S.A. 34:15-36. Special dependency rights have been enacted for spouses of first responders under N.J.S.A. 34:15-13. Cardiovascular and Cerebrovascular accidents for first responders enjoy special presumptions, and not only extend to 24 hours of remediation from emergency service, but can only be rebutted by clear and convincing evidence that the illness is not work-related. In that tradition, the Canzanella Act simplifies and enhances the pursuit of a workers' compensation remedy for police and firefighters, and certain other public safety officers stricken with cancer. The Canzanella Act is by no means unique to New Jersey, although it took nearly a decade before it was adopted. All 50 States and the District of Columbia have some form of presumptive cancer legislation. For a thorough review and compendium of statutes, see:

<https://firstrespondercenter.org/wp-content/uploads/2023/08/Firefighter-Presumptive-Cancer-Legislation-in-the-US-Print-Individual-Pages4.pdf>

The subject matter of this presentation will cover only the cancer provisions of the Canzanella Act, not the infectious disease, vaccination or radiation portions.

Always Start with the Statute

34:15-31.2. Short title This act shall be known and may be cited as the "Thomas P. Canzanella Twenty First Century First Responders Protection Act."

34:15-31.3. Findings, declarations relative to workers' compensation for certain public safety workers

The Legislature hereby finds and declares:

- a. Since the terrorist attacks of September 11, 2001, and the subsequent discovery of terrorist use of anthrax against American citizens that year, millions of dollars of State and federal funds have been spent, and many thousands of man-hours dedicated, to train and equip public safety workers in New Jersey regarding the management of terrorist attacks and other man-made or natural disasters;
- b. Public safety workers are required by necessity to take great personal risks of serious injury, illness and death in their duties to protect the people of New Jersey from the dangers of catastrophic emergencies, including, but in no way limited to, terrorist attacks and epidemics;
- c. The risks of exposure to carcinogens, communicable diseases, radiation and related hazards to health, already especially high for fire, police, emergency, medical and other public safety workers, is further increased by the duties of such workers in response to catastrophic emergencies, epidemics, and terrorist attacks which may involve materials related to biological or chemical warfare, or industrial chemicals or other hazardous materials released in connection with terrorist attacks against military, governmental, industrial, infrastructural, and other vulnerable facilities; and
- d. Many of the severe, painful and even fatal diseases and health conditions which afflict these workers because of those exposures and duties, such as cancer, may take long periods of time to manifest themselves; rev. date February 24, 2020 40
- e. It is therefore an appropriate public policy to modernize the workers' compensation system in this State to ensure the meeting of the critical needs of public safety workers who are New Jersey's first line of defense in the event of catastrophic emergencies, epidemics and terrorist attacks, and assure that those workers are not denied a level of support which is commensurate to the sacrifices they and their families make for the safety and wellbeing of the citizens of this State and the nation.

34:15-31.4. Definitions relative to workers' compensation for certain public safety workers For the purposes of this act:

"Hazardous chemicals or materials used in, or related to, chemical warfare" means chemicals and materials which may be used in chemical warfare, including, but not limited to, nerve agents, chemical asphyxiates, choking agents, blister agents, incapacitating agents, explosives, and includes other toxic, carcinogenic or otherwise hazardous industrial chemicals and materials to which public safety workers and members of the public may be exposed in connection with possible terrorist attacks against military, governmental, industrial, infrastructural, and other vulnerable facilities.

"Known carcinogen" means a substance which is known, or generally accepted by the scientific community to cause cancer in humans, as identified by the State Department of Health or by the International Agency for Research on Cancer.

"Pathogens or biological toxins used in, or related to, biological warfare or epidemics" means serious communicable diseases, pathogens not necessarily transmitted by sick or infected individuals, such as anthrax, and biological toxins, such as ricin, whether or not in weaponized form.

"Public safety worker" includes a member, employee, or officer of a paid, partially-paid, or volunteer fire or police department, force, company or district, including the State Police, a Community Emergency Response Team approved by the New Jersey Office of Emergency Management, or a correctional facility, or a basic or advanced medical technician of a first aid or rescue squad, or any other nurse, basic or advanced medical technician responding to a catastrophic incident and directly involved and in contact with the public during such an incident,

either as a volunteer, member of a Community Emergency Response Team or employed or directed by a health care facility.

“Serious communicable disease” means any disease which is characterized by the interruption, cessation or disorder of body functions, systems or organs which may result, if not treated, in disability, chronic illness or death, and is transmittable by association with, or proximity to, sick, infected or colonized individuals, including airborne transmission, or is transmittable by contact with their bodily fluids, secretions or excretions. “Serious communicable disease” includes, but is not limited to, meningitis, tuberculosis, viral hepatitis, human immunodeficiency virus infections, acquired immunodeficiency syndrome, cholera, hemorrhagic fever, plague, smallpox, or other disease identified as a serious communicable disease by the Department of Health, and also includes diseases caused by antibiotic resistant organisms.

34:15-31.5. Requirements for public safety worker to receive compensation If a public safety worker can demonstrate that in the course of his or her employment, the worker is:

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(1) the excretions, secretions, blood or other bodily fluids of one or more other individuals or is otherwise subjected to a potential exposure, by the other individual or individuals, including airborne exposure, to a serious communicable disease and any one of the other individuals is diagnosed with a serious communicable disease, or is otherwise determined to be infected with or at significant risk of contracting the serious communicable disease; or

(2) any pathogen or biological toxin used in, or related to, biological warfare or epidemics, including airborne exposure, then all care or treatment of the public safety worker, including testing, diagnosis, surveillance or other services needed to ascertain whether the public safety worker contracted a serious communicable disease and any related monitoring of the worker’s condition, and all time during which the public safety worker is unable to work while receiving the care or treatment, shall be compensable under the provisions of R.S.34:15-1 et seq., even if, after the care or treatment, it is ascertained that the public safety worker did not contract a serious communicable disease.

b. If it is ascertained that the public safety worker has contracted a serious communicable disease or related illness under the circumstances set forth in subsection a. of this section, there shall be a presumption that any injury, disability, chronic or corollary illness or death of the public safety worker caused by, attributable to, or attendant to the disease is compensable under the provisions of R.S.34:15-1 et seq. This prima facie presumption may be rebutted by a preponderance of the evidence showing that the exposure is not linked to the occurrence of the disease. The employer may require the worker to undergo, at the expense of the employer, reasonable testing, evaluation and monitoring of health conditions of the worker which is relevant to determining whether the exposure is linked to the occurrence of the disease, but the presumption of compensability shall not be adversely affected by any failure of the employer to require such testing, evaluation or monitoring.

34:15-31.6. Injury, illness, death resulting from administration of vaccine eligible for compensation Any injury, illness or death of any public safety worker, resulting from the administration to the worker of a vaccine including, but not limited to, smallpox vaccine, to prepare for, or respond to, any actual, threatened, or potential bioterrorism or epidemic, as part of an inoculation program in connection with the worker’s employment or in connection with any governmental program or recommendation for the inoculation of workers in the worker’s occupation, geographical area, or other category that includes the worker, or resulting from the transmission of disease from another employee or member of the public inoculated under the

program, is presumed to arise out of and in the course of the employment and all care or treatment of the worker, including testing, diagnosis, surveillance and monitoring of the worker's condition, and all time during which the worker is unable to work while receiving the care or treatment, is compensable under the provisions of R.S.34:15-1 et seq. This section shall not be regarded as authorizing any requirement that employees participate in an inoculation program or as diminishing any requirement of law that an inoculation program be voluntary. This prima facie presumption may be rebutted by a preponderance of the evidence showing that the administration of the vaccine is not linked to the injury, illness or death. The employer may require the worker to undergo, at the expense of the employer, reasonable testing, rev. date February 24, 2020 42 evaluation and monitoring of health conditions of the worker which is relevant to determining whether the administration of the vaccine is linked to the occurrence, but the presumption of compensability shall not be adversely affected by any failure of the employer to require such testing, evaluation or monitoring.

34:15-31.7. Injury, illness, death caused by certain substances eligible for compensation Any injury, illness or death of a public safety worker which may be caused by exposure to a known carcinogen, cancer-causing radiation or a radioactive substance, including cancer and damage to reproductive organs, shall be presumed to be compensable under the provisions of R.S.34:15-1 et seq., if the worker demonstrates that he was exposed, due to fire, explosion, spill or other means, to a known carcinogen, cancer-causing radiation or radioactive substances in the course of the worker's employment as a public safety worker and demonstrates that the injury, illness or death has manifested during his or her employment as a public safety worker. This prima facie presumption may be rebutted by a preponderance of the evidence that the exposure is not linked to the injury, illness or death. The employer of the public safety worker may require the worker to undergo, at the expense of the employer, reasonable testing, evaluation and monitoring of health conditions of the worker which is relevant to determining whether the exposure is linked to the occurrence, but the presumption of compensability shall not be adversely affected by any failure of the employer to require such testing, evaluation or monitoring. The employer shall maintain records regarding any instance in which any public safety worker in its employ was deployed to a facility or location where the presence of one or more substances which are known carcinogens is indicated in documents provided to local fire or police departments pursuant to the requirements of section 7 of P.L.1983, c.315 (C.34:5A-7) and where fire, explosions, spills or other events occurred which could result in exposure to those carcinogens. The records shall include the identity of each deployed public safety worker and each worker shall be provided notice of the records.

34:15-31.8. Injury, illness, death of firefighter caused by cancer eligible for compensation Any injury, illness or death of a firefighter which may be caused by cancer, including leukemia, shall be presumed to be an occupational disease compensable under the provisions of R.S.34:15-1 et seq., if the firefighter has completed not less than seven years of service as a firefighter, regardless of whether the firefighter is in active service or is no longer in active service of a paid, part-paid, or volunteer fire department at the time of the injury, illness or death, provided that the firefighter is not more than 75 years of age or has not been out of active service for more than 20 years. This prima facie presumption may be rebutted by a preponderance of the evidence that the occupational disease did not arise out of and in the course of the employment. The employer may require the firefighter to undergo, at the expense of the employer, reasonable testing, evaluation and monitoring of health conditions of the firefighter which is relevant to determining whether the occupational disease arose out of and in the course of the employment, but the presumption of compensability shall not be adversely affected by any failure of the employer to require such

testing, evaluation or monitoring. In order to receive this occupational cancer disability benefit, the type of cancer involved shall be a type which may be caused by exposure to heat, radiation, or a known or suspected, carcinogen as defined by the International Agency for Research on Cancer. A firefighter with less than seven years of service as a firefighter who experiences injury, illness or death which may be caused by exposure to a known carcinogen, cancer-causing radiation or a radioactive substance, including cancer and damage to reproductive organs, shall be subject to the provisions of section 6 [C.34:15-31.7] of this act.

Covered Persons Presumption & Rebuttal

1. Injured, Ill, or Deceased firefighter due to cancer;
 - a. Caused by cancer (and the only specifically named and included type is leukemia);
 - b. Seven years of service as a firefighter, whether paid or volunteer;
 - c. Not more than 75 years;
 - d. Not out of active service more than 20 years.
 - e. Cancer of a type caused by exposure to heat, radiation or a known *or suspected* carcinogen as defined by the IARC.

Rebuttal: By a preponderance of evidence that the occupational disease did not arise out of an in the course of employment.

Practice Point: "Known or suspected carcinogen." The IARC monographs divide cancer analytically into groups: "Sufficient evidence" for exposure to cause cancer in humans vs. Limited evidence in humans for cancers to the colon, prostate, and testis and for melanoma of the skin and non-Hodgkins lymphoma. The statute embraces the merely suspected carcinogenic exposure, expanding the types of cancer by exposure, not necessarily by statistical causation. Thus, if the IARC identifies

a substance which is part of the exposure as “a suspected carcinogen” then the Statute does not require proof of causation, only suspicion of causation.

Gathering the Data: Understanding the Proof Requirements

The primary source of medical proof in a Canzanella Act case resides in the monographs of the International Agency for Research on Cancer. The Legislature describes the “Department of Health,” ostensibly the New Jersey Department of Health and the IARC as the standards for defining a “known carcinogen.” The New Jersey DOH maintains a website with information concerning cancer: <https://www.nj.gov/health/ces/>

The DOH publicizes monthly cancer data briefs, information on evaluation of potential health implications from Environmental Exposures, and a cancer registry.
<https://www.nj.gov/health/ces/cancer-researchers/cancer-data/index.shtml>

The IARC has published two monographs on the incidence of cancer in firefighters, most recently monograph 132, which supersedes the prior publication.
<https://monographs.iarc.who.int/news-events/volume-132-occupational-exposure-as-a-firefighter/>
is the introductory note. The article, which abstracts the actual monograph, is at
[https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045\(22\)00390-4/fulltext](https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045(22)00390-4/fulltext)

The Working Group of the IARC evaluated occupational exposure as a firefighter as *carcinogenic to humans (Group 1)* on the basis of *sufficient* evidence for cancer in humans. Occupational exposure as a firefighter causes mesothelioma and cancer of the bladder. There

was *limited* evidence in humans for cancers of the colon, prostate, and testis, and for melanoma of the skin and non-Hodgkin lymphoma. There was also *strong* mechanistic evidence that occupational exposure as a firefighter exhibits multiple key characteristics of carcinogens in exposed humans. Surprisingly to some, the incidence of lung and thyroid cancers were lower in firefighters than in the general population. Several inherent biases made those causal associations more difficult to understand, including surveillance bias, incidence of smoking, and healthy worker hire bias. It is very important to follow the science carefully, as a majority of IARC contributors found higher degrees of inflammatory disease in firefighters than the general population, and that suggests changes in the rate and level of cell mutation. The studies continue, and it is expected that greater understanding of the consequences of long-term exposure to inflammation and carcinogens will result in an expansion of causality.

Counsel evaluating a Canzanella Act claim should cultivate an understanding of the term “SIR” or standardized incidence ratio, so as to better understand the IARC monographs. Put simply, the SIR are used when disease rates in a cohort being studied are compared to disease rates in a reference population, either nationally or with particularized geography. As an example, an SIR of 1.85 for lung cancer incidence among foundry workers means that almost twice the number of lung cancer cases are observed in foundry workers as in an age, gender and time period specific to a similar, general population. SIR’s are expressed in ratios. The SIR number is significant if the sample is large enough, there are no major confounding factors, and in particular, if there is a discoverable reason for correlation. But again: NJSA 34:15-31.7 does not require a specific SIR factor, only the identification of a *suspected* carcinogen and the emergence of a corresponding cancer subject to that suspicion.