



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB1824

Introduced 2/25/2005, by Sen. Terry Link

SYNOPSIS AS INTRODUCED:

820 ILCS 305/6
820 ILCS 310/1

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

Amends the Workers' Compensation Act and the Workers' Occupational Diseases Act. Provides that any condition or impairment of health of a firefighter, emergency medical technician, or paramedic that results directly or indirectly from any bloodborne pathogen, lung or respiratory disease or condition, heart or vascular disease or condition, hypertension, tuberculosis, or cancer resulting in any disability to the employee shall be conclusively presumed to arise out of and in the course of the employee's employment and shall be conclusively presumed to be causally connected to the hazards or exposures of the employment. Provides that the presumption shall also apply to any hernia or hearing loss suffered by a firefighter, emergency medical technician, or paramedic. Provides that the presumption does not apply to an employee who has been a firefighter, emergency medical technician, or paramedic for less than 5 years at the time the condition or impairment is discovered.

LRB094 07102 WGH 37247 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
24 notice shall promptly be corrected accordingly. In the event
25 the employer is operating as a self-insured employer the notice
26 shall state the name and address of the company, if any,
27 servicing the compensation payments of the employer, and the
28 name and address of the person in charge of making compensation
29 payments.

30 (b) Every employer subject to this Act shall maintain
31 accurate records of work-related deaths, injuries and illness
32 other than minor injuries requiring only first aid treatment

1 and which do not involve medical treatment, loss of
2 consciousness, restriction of work or motion, or transfer to
3 another job and file with the Commission, in writing, a report
4 of all accidental deaths, injuries and illnesses arising out of
5 and in the course of the employment resulting in the loss of
6 more than 3 scheduled work days. In the case of death such
7 report shall be made no later than 2 working days following the
8 accidental death. In all other cases such report shall be made
9 between the 15th and 25th of each month unless required to be
10 made sooner by rule of the Commission. In case the injury
11 results in permanent disability, a further report shall be made
12 as soon as it is determined that such permanent disability has
13 resulted or will result from the injury. All reports shall
14 state the date of the injury, including the time of day or
15 night, the nature of the employer's business, the name,
16 address, age, sex, conjugal condition of the injured person,
17 the specific occupation of the injured person, the direct cause
18 of the injury and the nature of the accident, the character of
19 the injury, the length of disability, and in case of death the
20 length of disability before death, the wages of the injured
21 person, whether compensation has been paid to the injured
22 person, or to his or her legal representative or his heirs or
23 next of kin, the amount of compensation paid, the amount paid
24 for physicians', surgeons' and hospital bills, and by whom
25 paid, and the amount paid for funeral or burial expenses if
26 known. The reports shall be made on forms and in the manner as
27 prescribed by the Commission and shall contain such further
28 information as the Commission shall deem necessary and require.
29 The making of these reports releases the employer from making
30 such reports to any other officer of the State and shall
31 satisfy the reporting provisions as contained in the "Health
32 and Safety Act" and "An Act in relation to safety inspections
33 and education in industrial and commercial establishments and
34 to repeal an Act therein named", approved July 18, 1955, as now
35 or hereafter amended. The reports filed with the Commission
36 pursuant to this Section shall be made available by the

1 Commission to the Director of Labor or his representatives and
2 to all other departments of the State of Illinois which shall
3 require such information for the proper discharge of their
4 official duties. Failure to file with the Commission any of the
5 reports required in this Section is a petty offense.

6 Except as provided in this paragraph, all reports filed
7 hereunder shall be confidential and any person having access to
8 such records filed with the Illinois Workers' Compensation
9 Commission as herein required, who shall release any
10 information therein contained including the names or otherwise
11 identify any persons sustaining injuries or disabilities, or
12 give access to such information to any unauthorized person,
13 shall be subject to discipline or discharge, and in addition
14 shall be guilty of a Class B misdemeanor. The Commission shall
15 compile and distribute to interested persons aggregate
16 statistics, taken from the reports filed hereunder. The
17 aggregate statistics shall not give the names or otherwise
18 identify persons sustaining injuries or disabilities or the
19 employer of any injured or disabled person.

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

23 (1) In case of the legal disability of the employee or any
24 dependent of a deceased employee who may be entitled to
25 compensation under the provisions of this Act, the limitations
26 of time by this Act provided do not begin to run against such
27 person under legal disability until a guardian has been
28 appointed.

29 (2) In cases of injuries sustained by exposure to
30 radiological materials or equipment, notice shall be given to
31 the employer within 90 days subsequent to the time that the
32 employee knows or suspects that he has received an excessive
33 dose of radiation.

34 No defect or inaccuracy of such notice shall be a bar to
35 the maintenance of proceedings on arbitration or otherwise by
36 the employee unless the employer proves that he is unduly

1 prejudiced in such proceedings by such defect or inaccuracy.

2 Notice of the accident shall give the approximate date and
3 place of the accident, if known, and may be given orally or in
4 writing.

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

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

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

25 If in any case except one where the injury was caused by
26 exposure to radiological materials or equipment or asbestos,
27 the accidental injury results in death application for
28 compensation for death may be filed with the Commission within
29 3 years after the date of death where no compensation has been
30 paid or within 2 years after the date of the last payment of
31 compensation where any has been paid, whichever shall be later,
32 but not thereafter.

33 If an accidental injury caused by exposure to radiological
34 material or equipment or asbestos results in death within 25
35 years after the last day that the employee was so exposed
36 application for compensation for death may be filed with the

1 Commission within 3 years after the date of death, where no
2 compensation has been paid, or within 2 years after the date of
3 the last payment of compensation where any has been paid,
4 whichever shall be later, but not thereafter.

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

9 (f) Any condition or impairment of health of an employee
10 employed as a firefighter, emergency medical technician (EMT),
11 or paramedic which results directly or indirectly from any
12 bloodborne pathogen, lung or respiratory disease or condition,
13 heart or vascular disease or condition, hypertension,
14 tuberculosis, or cancer resulting in any disability
15 (temporary, permanent, total, or partial) to the employee shall
16 be conclusively presumed to arise out of and in the course of
17 the employee's firefighting, EMT, or paramedic employment and,
18 further, shall be conclusively presumed to be causally
19 connected to the hazards or exposures of the employment. This
20 presumption shall also apply to any hernia or hearing loss
21 suffered by an employee employed as a firefighter, EMT, or
22 paramedic. However, this presumption shall not apply to any
23 employee who has been employed as a firefighter, EMT, or
24 paramedic for less than 5 years at the time the condition or
25 impairment is discovered.

26 (Source: P.A. 93-721, eff. 1-1-05.)

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

29 (820 ILCS 310/1) (from Ch. 48, par. 172.36)

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

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

34 1. The State and each county, city, town, township,

1 incorporated village, school district, body politic, or
2 municipal corporation therein.

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

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

29 Where an employee files an Application for Adjustment
30 of Claim with the Illinois Workers' Compensation
31 Commission alleging that his or her claim is covered by the
32 provisions of the preceding paragraph, and joining both the
33 alleged loaning and borrowing employers, they and each of
34 them, upon written demand by the employee and within 7 days
35 after receipt of such demand, shall have the duty of filing
36 with the Illinois Workers' Compensation Commission a

1 written admission or denial of the allegation that the
2 claim is covered by the provisions of the preceding
3 paragraph and in default of such filing or if any such
4 denial be ultimately determined not to have been bona fide
5 then the provisions of Paragraph K of Section 19 of this
6 Act shall apply.

7 An employer whose business or enterprise or a
8 substantial part thereof consists of hiring, procuring or
9 furnishing employees to or for other employers operating
10 under and subject to the provisions of this Act for the
11 performance of the work of such other employers and who
12 pays such employees their salary or wage notwithstanding
13 that they are doing the work of such other employers shall
14 be deemed a loaning employer within the meaning and
15 provisions of this Section.

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

18 1. Every person in the service of the State, county,
19 city, town, township, incorporated village or school
20 district, body politic or municipal corporation therein,
21 whether by election, appointment or contract of hire,
22 express or implied, oral or written, including any official
23 of the State, or of any county, city, town, township,
24 incorporated village, school district, body politic or
25 municipal corporation therein and except any duly
26 appointed member of the fire department in any city whose
27 population exceeds 500,000 according to the last Federal or
28 State census, and except any member of a fire insurance
29 patrol maintained by a board of underwriters in this State.
30 One employed by a contractor who has contracted with the
31 State, or a county, city, town, township, incorporated
32 village, school district, body politic or municipal
33 corporation therein, through its representatives, shall
34 not be considered as an employee of the State, county,
35 city, town, township, incorporated village, school
36 district, body politic or municipal corporation which made

1 the contract.

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

23 (c) "Commission" means the Illinois Workers' Compensation
24 Commission created by the Workers' Compensation Act, approved
25 July 9, 1951, as amended.

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

32 A disease shall be deemed to arise out of the employment if
33 there is apparent to the rational mind, upon consideration of
34 all the circumstances, a causal connection between the
35 conditions under which the work is performed and the
36 occupational disease. The disease need not to have been

1 foreseen or expected but after its contraction it must appear
2 to have had its origin or aggravation in a risk connected with
3 the employment and to have flowed from that source as a
4 rational consequence.

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

16 Any injury to or disease or death of an employee arising
17 from the administration of a vaccine, including without
18 limitation smallpox vaccine, to prepare for, or as a response
19 to, a threatened or potential bioterrorist incident to the
20 employee as part of a voluntary inoculation program in
21 connection with the person's employment or in connection with
22 any governmental program or recommendation for the inoculation
23 of workers in the employee's occupation, geographical area, or
24 other category that includes the employee is deemed to arise
25 out of and in the course of the employment for all purposes
26 under this Act. This paragraph added by Public Act 93-829 ~~this~~
27 ~~amendatory Act of the 93rd General Assembly~~ is declarative of
28 existing law and is not a new enactment.

29 The employer liable for the compensation in this Act
30 provided shall be the employer in whose employment the employee
31 was last exposed to the hazard of the occupational disease
32 claimed upon regardless of the length of time of such last
33 exposure, except, in cases of silicosis or asbestosis, the only
34 employer liable shall be the last employer in whose employment
35 the employee was last exposed during a period of 60 days or
36 more after the effective date of this Act, to the hazard of

1 such occupational disease, and, in such cases, an exposure
2 during a period of less than 60 days, after the effective date
3 of this Act, shall not be deemed a last exposure. If a miner
4 who is suffering or suffered from pneumoconiosis was employed
5 for 10 years or more in one or more coal mines there shall,
6 effective July 1, 1973 be a rebuttable presumption that his or
7 her pneumoconiosis arose out of such employment.

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

12 Any condition or impairment of health of an employee
13 employed as a firefighter, emergency medical technician (EMT),
14 or paramedic which results directly or indirectly from any
15 bloodborne pathogen, lung or respiratory disease or condition,
16 heart or vascular disease or condition, hypertension,
17 tuberculosis, or cancer resulting in any disability
18 (temporary, permanent, total, or partial) to the employee shall
19 be conclusively presumed to arise out of and in the course of
20 the employee's firefighting, EMT, or paramedic employment and,
21 further, shall be conclusively presumed to be causally
22 connected to the hazards or exposures of the employment. This
23 presumption shall also apply to any hernia or hearing loss
24 suffered by an employee employed as a firefighter, EMT, or
25 paramedic. However, this presumption shall not apply to any
26 employee who has been employed as a firefighter, EMT, or
27 paramedic for less than 5 years at the time the condition or
28 impairment is discovered.

29 The insurance carrier liable shall be the carrier whose
30 policy was in effect covering the employer liable on the last
31 day of the exposure rendering such employer liable in
32 accordance with the provisions of this Act.

33 (e) "Disablement" means an impairment or partial
34 impairment, temporary or permanent, in the function of the body
35 or any of the members of the body, or the event of becoming
36 disabled from earning full wages at the work in which the

1 employee was engaged when last exposed to the hazards of the
2 occupational disease by the employer from whom he or she claims
3 compensation, or equal wages in other suitable employment; and
4 "disability" means the state of being so incapacitated.

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

16 (Source: P.A. 93-721, eff. 1-1-05; 93-829, eff. 7-28-04;
17 revised 10-25-04.)