

SB3220



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3220

Introduced 2/1/2012, by Sen. Linda Holmes

SYNOPSIS AS INTRODUCED:

820 ILCS 310/1

from Ch. 48, par. 172.36

30 ILCS 805/8.36 new

Amends 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 Parkinson's disease 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, except as otherwise specified. Amends the State Mandates Act to require implementation without reimbursement by the State. Effective immediately.

LRB097 16910 JDS 62098 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

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' Occupational Diseases Act is
5 amended by changing Section 1 as follows:

6 (820 ILCS 310/1) (from Ch. 48, par. 172.36)

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

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

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

14 2. Every person, firm, public or private corporation,
15 including hospitals, public service, eleemosynary,
16 religious or charitable corporations or associations, who
17 has any person in service or under any contract for hire,
18 express or implied, oral or written.

19 3. Where an employer operating under and subject to the
20 provisions of this Act loans an employee to another such
21 employer and such loaned employee sustains a compensable
22 occupational disease in the employment of such borrowing
23 employer and where such borrowing employer does not provide

1 or pay the benefits or payments due such employee, such
2 loaning employer shall be liable to provide or pay all
3 benefits or payments due such employee under this Act and
4 as to such employee the liability of such loaning and
5 borrowing employers shall be joint and several, provided
6 that such loaning employer shall in the absence of
7 agreement to the contrary be entitled to receive from such
8 borrowing employer full reimbursement for all sums paid or
9 incurred pursuant to this paragraph together with
10 reasonable attorneys' fees and expenses in any hearings
11 before the Illinois Workers' Compensation Commission or in
12 any action to secure such reimbursement. Where any benefit
13 is provided or paid by such loaning employer, the employee
14 shall have the duty of rendering reasonable co-operation in
15 any hearings, trials or proceedings in the case, including
16 such proceedings for reimbursement.

17 Where an employee files an Application for Adjustment
18 of Claim with the Illinois Workers' Compensation
19 Commission alleging that his or her claim is covered by the
20 provisions of the preceding paragraph, and joining both the
21 alleged loaning and borrowing employers, they and each of
22 them, upon written demand by the employee and within 7 days
23 after receipt of such demand, shall have the duty of filing
24 with the Illinois Workers' Compensation Commission a
25 written admission or denial of the allegation that the
26 claim is covered by the provisions of the preceding

1 paragraph and in default of such filing or if any such
2 denial be ultimately determined not to have been bona fide
3 then the provisions of Paragraph K of Section 19 of this
4 Act shall apply.

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

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

16 1. Every person in the service of the State, county,
17 city, town, township, incorporated village or school
18 district, body politic or municipal corporation therein,
19 whether by election, appointment or contract of hire,
20 express or implied, oral or written, including any official
21 of the State, or of any county, city, town, township,
22 incorporated village, school district, body politic or
23 municipal corporation therein and except any duly
24 appointed member of the fire department in any city whose
25 population exceeds 500,000 according to the last Federal or
26 State census, and except any member of a fire insurance

1 patrol maintained by a board of underwriters in this State.
2 One employed by a contractor who has contracted with the
3 State, or a county, city, town, township, incorporated
4 village, school district, body politic or municipal
5 corporation therein, through its representatives, shall
6 not be considered as an employee of the State, county,
7 city, town, township, incorporated village, school
8 district, body politic or municipal corporation which made
9 the contract.

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

1 pursue his or her remedy in the State where the disease was
2 contracted, or in the State where the contract of hire is
3 made, or in the State where the employment is principally
4 localized.

5 (c) "Commission" means the Illinois Workers' Compensation
6 Commission created by the Workers' Compensation Act, approved
7 July 9, 1951, as amended.

8 (d) In this Act the term "Occupational Disease" means a
9 disease arising out of and in the course of the employment or
10 which has become aggravated and rendered disabling as a result
11 of the exposure of the employment. Such aggravation shall arise
12 out of a risk peculiar to or increased by the employment and
13 not common to the general public.

14 A disease shall be deemed to arise out of the employment if
15 there is apparent to the rational mind, upon consideration of
16 all the circumstances, a causal connection between the
17 conditions under which the work is performed and the
18 occupational disease. The disease need not to have been
19 foreseen or expected but after its contraction it must appear
20 to have had its origin or aggravation in a risk connected with
21 the employment and to have flowed from that source as a
22 rational consequence.

23 An employee shall be conclusively deemed to have been
24 exposed to the hazards of an occupational disease when, for any
25 length of time however short, he or she is employed in an
26 occupation or process in which the hazard of the disease

1 exists; provided however, that in a claim of exposure to atomic
2 radiation, the fact of such exposure must be verified by the
3 records of the central registry of radiation exposure
4 maintained by the Department of Public Health or by some other
5 recognized governmental agency maintaining records of such
6 exposures whenever and to the extent that the records are on
7 file with the Department of Public Health or the agency.

8 Any injury to or disease or death of an employee arising
9 from the administration of a vaccine, including without
10 limitation smallpox vaccine, to prepare for, or as a response
11 to, a threatened or potential bioterrorist incident to the
12 employee as part of a voluntary inoculation program in
13 connection with the person's employment or in connection with
14 any governmental program or recommendation for the inoculation
15 of workers in the employee's occupation, geographical area, or
16 other category that includes the employee is deemed to arise
17 out of and in the course of the employment for all purposes
18 under this Act. This paragraph added by Public Act 93-829 is
19 declarative of existing law and is not a new enactment.

20 The employer liable for the compensation in this Act
21 provided shall be the employer in whose employment the employee
22 was last exposed to the hazard of the occupational disease
23 claimed upon regardless of the length of time of such last
24 exposure, except, in cases of silicosis or asbestosis, the only
25 employer liable shall be the last employer in whose employment
26 the employee was last exposed during a period of 60 days or

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

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

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

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

12 The insurance carrier liable shall be the carrier whose
13 policy was in effect covering the employer liable on the last
14 day of the exposure rendering such employer liable in
15 accordance with the provisions of this Act.

16 (e) "Disablement" means an impairment or partial
17 impairment, temporary or permanent, in the function of the body
18 or any of the members of the body, or the event of becoming
19 disabled from earning full wages at the work in which the
20 employee was engaged when last exposed to the hazards of the
21 occupational disease by the employer from whom he or she claims
22 compensation, or equal wages in other suitable employment; and
23 "disability" means the state of being so incapacitated.

24 (f) No compensation shall be payable for or on account of
25 any occupational disease unless disablement, as herein
26 defined, occurs within two years after the last day of the last

1 exposure to the hazards of the disease, except in cases of
2 occupational disease caused by berylliosis or by the inhalation
3 of silica dust or asbestos dust and, in such cases, within 3
4 years after the last day of the last exposure to the hazards of
5 such disease and except in the case of occupational disease
6 caused by exposure to radiological materials or equipment, and
7 in such case, within 25 years after the last day of last
8 exposure to the hazards of such disease.

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

10 Section 90. The State Mandates Act is amended by adding
11 Section 8.36 as follows:

12 (30 ILCS 805/8.36 new)

13 Sec. 8.36. Exempt mandate. Notwithstanding Sections 6 and 8
14 of this Act, no reimbursement by the State is required for the
15 implementation of any mandate created by this amendatory Act of
16 the 97th General Assembly.

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.