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TO: Ohio House Insurance Committee
Chairman Representative Tom Brinkman

FROM: Ohio Municipal League

Dear Mr. Chairman and Members,

Today, we anticipate that Representative Mike Henne, Vice Chairman of the Ohio House Insurance Committee will submit an amendment to the workers compensation budget, House Bill (HB) 27 that will address Senate Bill (SB) 27 of the 131st General Assembly. These amendments arise from a negotiation between the OML and the The Ohio Association of Professional Fire Fighters (OAPFF) to agree to these amendments. We are proud that this amendment represents the product of a negotiation between labor and management and we believe it represents an honest effort by both sides to balance anti-fraud measures with retention of the underlying presumption created in SB 27.

What is the Amendment?

The original SB 27 creates a legal presumption that a firefighter’s cancer was incurred while performing the member’s official duties, when, among certain other elements, a firefighter is exposed to certain carcinogens. The amendment is very narrow in scope. It simply places a burden on the employer to show that the carcinogen that the member was exposed to could not or did not cause the cancer the member has, and only through the use of “competent scientific evidence.”

Why add a causation element?

Under the passed version of SB 27, there was no mechanism for discussing whether the type of carcinogen that the member alleges to have been exposed to, actually causes the type of cancer that member has. Remember, that cancer is not one disease, but many. All the studies of cancer in firefighters, that have ever been done, distinguish between the different types of cancer and show different results among them. This was important because there is no one carcinogen causes all types of cancer, nor is there any type of cancer that is caused by all carcinogens. Many cancers, especially in the Group 2A category, are linked only to very specific conditions.

Take for instance, tetrachloroethylene, which is found in dry-cleaning chemicals. The IARC only suspects this substance of causing hemangiosarcoma, a form of liver cancer and only through continuous exposures over time. Under current law, there is high potential for misunderstanding/ignoring the literature and using exposure to something like tetrachloroethylene as evidence in cases where the cancer is not hemangiosarcoma. For instance, an employee may have skin cancer, which medical professionals agree is caused by exposure to UV rays, particularly when exposed to certain skin types. It would be inappropriate for an employee with skin cancer to make a claim that exposure to tetrachloroethylene caused his/her skin cancer. We do not believe this was the intent of the bill or that proponents intended to perpetuate these types of fraudulent claims.

Why is the Amendment in the Employer’s Section?

It was important to certain members of the General Assembly and the OAPFF that this amendment pose no additional burden to the employee-firefighter-claimant. Therefore, although we believed that causation should be a condition precedent to the presumption, our proposal put this amendment into the employer’s section, placing the burden entirely on the employer. We believe this really benefits the employee because it makes it clear that the firefighter does not have to prove causation up front—rather the employer has to show that causation is lacking. Not only does this preserve the presumption in SB 27, but also is in keeping with the intent of the bill: that the burdens should generally be on the employer in these proceedings.

Keep in mind that, under ORC 4123.68, the member is automatically “entitled” to workers compensation if, under ORC 4123.01, he/she shows that their “employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general.” We mention this because it shows that employees will continue to have every advantage after if this amendment passes. The ORC provides multiple avenues for a firefighter with cancer to get into the workers compensation system, and SB 27 was just one of them.

Addressing Other Amendments that have been Offered

The OML has many problems with SB 27 overall and generally endorses a wholesale repeal of SB 27. Our objections have been well documented in previous testimony. However, if this amendment is accepted, the OML does not request any other amendments or alterations to the language enacted in SB 27 in this workers compensation budget House Bill 27, including recent amendments addressing firefighter equipment.

The Ohio Bureau of Workers Compensation will be issuing a report on this subject as required under ORC 4123.86(A). We urge the General Assembly members to examine that study at that time to determine if any further changes are needed at that point.

Josh Brown, Esq.
Ohio Municipal League