

Presumptive Law for Radiological Hazardous Waste Facility Workers, Health Care and Frontline Workers

Starla Treznoski

Self-Insurance Policy Operations Manager





Presumption Laws

- Radiological hazardous waste facility workers
- Health care workers
- Frontline workers



Presumption Law History

Coverage for presumptive occupational disease began in 1987. The legislature found that the employment of firefighters exposes them to smoke, fumes, and toxic or chemical substances. The legislature recognized that firefighters as a class have a higher rate of respiratory disease than the general public, and found that respiratory disease should be presumed to be occupationally related for industrial insurance purposes.

These presumption laws have been amended multiple times. Other presumption laws have also been passed.



Presumptions Explained

- Conditions covered under presumption laws are presumed to be work related.
- Does not assume the condition is present. Medical diagnosis and supporting documentation is required.
- Some conditions require a certain number of years of service.
- Include factors that may rebut the presumption.



Radiological Hazardous Waste Facility Worker Presumption

- RCW 51.32.187
- Previously referred to as the Hanford Presumption, the law passed in March 2018 and took effect on June 7, 2018. It originally covered certain Department of Energy (DOE) Hanford site workers, including contractors or subcontractors, who worked onsite for at least one eight-hour shift while covered under Washington's industrial insurance.



Radiological Hazardous Waste Facility Presumption

- In 2022 SSB 5890 changed and expanded the definition of those covered under the law from only Hanford site workers to a more generic definition that includes workers who work at other radiological hazardous waste facilities (excluding military installations). It also excluded communicable diseases from the covered conditions of respiratory diseases and neurological diseases. These changes went into effect the date the Governor signed on March 11, 2022



Radiological Hazardous Waste Facility Presumption

- Conditions covered include:
 - Respiratory disease (except communicable diseases)
 - Heart problems experienced within 72 hours of exposure to fumes, toxic substances, or chemicals at the site
 - Beryllium sensitization, and acute and chronic beryllium disease
 - Neurological disease (except communicable diseases)



Radiological Hazardous Waste Facility Presumption

- Certain cancers - only covered if a worker did not show evidence of cancer when given a qualifying medical examination when they became a site worker, or didn't receive a medical exam because it wasn't required.



Radiological Hazardous Waste Facility Presumption

- Cancers covered include:
 - Leukemia
 - Primary or secondary lung cancer, including bronchi and trachea, sarcoma of the lung, other than in situ lung cancer that is discovered during or after a postmortem examination, but not including mesothelioma or pleura cancer



Radiological Hazardous Waste Facility Presumption

- Lymphomas, other than Hodgkin's disease
- Waldenstrom's macroglobulinemia and mycosis fungoides
- Primary or secondary bone cancer
- Primary or secondary renal (kidney) cancer



Radiological Hazardous Waste Facility Presumption

- Primary cancer of the:
 - Thyroid
 - Male or female breast
 - Esophagus
 - Stomach
 - Pharynx, including all three areas, oropharynx, nasopharynx, and hypopharynx and the larynx. The oropharynx includes base of the tongue, soft palate and tonsils (the hypopharynx includes the pyriform sinus).
 - Small intestine



Radiological Hazardous Waste Facility Presumption

- Pancreas
- Bile ducts, including ampulla of vater
- Gall bladder
- Salivary gland
- Urinary bladder
- Brain (malignancies only; not including intracranial endocrine glands and other parts of the central nervous system or borderline astrocytomas)
- Colon, including rectum, and appendix
- Ovary, including fallopian tubes if both organs are involved
- Liver, except if cirrhosis or hepatitis B is indicated



Challenges to Presumption

- The presumption may be rebutted by clear and convincing evidence. That may include:
 - Use of tobacco products
 - Physical fitness
 - Weight
 - Lifestyle
 - Hereditary factors
 - Exposure from other employment or non-employment activities



Questions?





Frontline and Health Care Workers

In 2021, the legislature extended presumptive coverage to frontline workers who contract an infectious or contagious disease when the President of the U.S.A. or the Governor of Washington declares a public health emergency. RCW 51.32.181 establishes rules for presumption for frontline workers and defines frontline workers.

The legislature also extended presumptive coverage to health care workers who contract or are quarantined for infectious or contagious diseases, which are the subject of a public health emergency. RCW 51.32.390.



Frontline and Health Care Workers



Claims & Insurance

Self-Insurance

COVID-19 claims

Washington Gov. Jay Inslee has ordered lifting the public health emergency relating to the COVID-19 pandemic effective Oct. 31, 2022.

Presumptive workers' compensation coverage for contraction of or quarantine due to COVID-19 ends with the end of state and federal public health emergency.

Healthcare and frontline workers will continue to be eligible for presumptive coverage until the U.S. president declares an end to public health emergency.

Claims for COVID-19 falling outside the presumptive coverage will be considered under standard occupational disease criteria.

Questions? Email: SITrainerQuestions@LNI.wa.gov



Frontline Workers

- RCW 51.32.181
- Effective May 11, 2021



Frontline Workers

Frontline workers are those who interact with the general public or other employees in the course of their work during the public health emergency. The list includes:

- First responders
- Workers performing food processing, manufacturing, distribution, or meat packing
- Farmworkers
- Public transit drivers and operators



Frontline Workers

- Maintenance, janitorial, and food service workers at any facility treating patients
- Employees of licensed child care facilities
- Corrections officers and support employees working at a correctional institution

The complete list can be found in RCW 51.32.181



Frontline Workers

- Must provide verification to the department or self-insurer that they contracted the disease
- May be rebutted by preponderance of evidence
- Time-loss is payable for the 1st 3 days after the date of manifestation



Health Care Workers

A health care worker a worker at any health care facility or other organization that provides emergency or medical services and who has or likely has had direct contact with any person who has been exposed or tested positive to the disease



Health Care Workers

- RCW 51.32.390
- Applies retroactively to February 29, 2020, when Gov. Inslee declared a state of emergency.



Health Care Workers

- Must provide verification to the department or self-insurer of contraction or quarantine
- May be rebutted by clear and convincing evidence
- Time-loss is payable for the 1st 3 days after the date of manifestation



Frontline and Health Care Workers

- If similar benefits are paid as part of a federal or state program, time-loss benefits are not payable for the same period of time covered.



Frontline and Health Care Workers

Presumptive workers' compensation coverage due to COVID-19 ends with the end of the state and federal public health emergency.



Benefit Entitlement

- Presumption claims are eligible for the same benefits as any other claim, which may include:
 - Payment for covered medical treatment
 - Wage replacement benefits
 - Vocational services
 - Permanent partial disability
 - Permanent total disability (pension)
 - Survivor benefits for eligible beneficiaries, if an allowed condition results in death



Non Presumptive COVID-19 Claims

COVID-19 is not presumed to be work-related for those who are not frontline or health care workers.



Non Presumptive COVID-19 Claims

Claims for these workers are considered on a case by case basis under standard occupational disease criteria.



Vaccine Reaction Claims

A worker may file a claim, but there is no presumption of coverage.



Vaccine Reaction Claims

Was the vaccine or booster by the employer and/or by government order, rule, or law as a condition of employment?



Self-Insurance and State Fund

- **If the employer is self-insured:** The worker should contact their employer, who will supply them with a Self-Insurer Accident Report (SIF-2) and can discuss the process in detail. The worker should complete the form and return it to the employer as soon as possible.
- **If the employer is State Fund:** The worker can file the accident report at their doctor's office, on L&I's website 24 hours a day (filefast.lni.wa.gov), or by calling L&I (877-561-3453) Monday through Friday, 8 a.m. to 5 p.m. If they complete the accident report at the doctor's office, the doctor files the form for them.



First Responder Presumption WAC Updates

- WAC 296-14-310
- WAC 296-14-325
- WAC 296-14-330



QUESTIONS?