

# Workers' Compensation Presumptions under Chapter 607 of the Government Code

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## How Presumptions Supplant Causation

- Presumptions are nothing more than rules for the guidance of trial judges in locating the burden of producing evidence at a particular time.
- Presumptions take the place of actual causation.
- The sole effect of a presumption is to fix the burden of producing evidence.



## Applicable Occupations

Chapter 607 presumptions apply only to

- A detention officer,
- A custodial officer,
- A firefighter,\*
- A peace officer, or
- An emergency medical technician.

*\* The cancer presumption is only applicable to firefighters*



## Exclusions

- The firefighter presumptions are subject to a number of exclusions created by the Legislature.
- These are generally policy decisions designed to shape the boundaries within which the presumptions can operate.



## The Tobacco Exclusion (New & Old)

Tex. Gov't Code Sec. 607.052

(b) A presumption under this subchapter does not apply:  
(4) if the disease or illness for which benefits or compensation is sought is known to be caused by the use of tobacco and:

(A) the firefighter or emergency medical technician is or has been a user of tobacco; or

(B) the firefighter's or emergency medical technician's spouse has, during the marriage, been a user of tobacco that is consumed through smoking.



## Two Rarely Used Presumptions

- Smallpox (Section 607.053)
- Tuberculosis or other respiratory illness (Section 607.054)
  - Each of these presumptions apply to firefighters, EMTs and Peace Officers



## Myocardial Infarctions & Strokes (New & Old)

Tex. Gov't Code Sec. 607.056

(a) FF or EMT who suffers an acute myocardial infarction or stroke resulting in disability or death is presumed to have suffered the disability or death during the course and scope of employment as a FF or EMT if:

(1) while on duty:

(A) engaged in situation that involved nonroutine stressful or strenuous physical activity involving fire suppression, rescue, hazardous material response, emergency medical services, or other emergency response activity; or



## Myocardial Infarctions & Strokes (New & Old)

Tex. Gov't Code Sec. 607.056 (continued)

(B) participated in a training exercise that involved nonroutine stressful or strenuous physical activity; and

(2) the acute myocardial infarction or stroke occurred while the firefighter or emergency medical technician was engaging in the activity described under Subdivision (1).

(b) For purposes of this section, "nonroutine stressful or strenuous physical activity" does not include clerical, administrative, or nonmanual activities.



## Cancer Cases (New & Old)

Tex. Gov't Code Sec. 607.055

(a) A FF or EMT who suffers from cancer resulting in death or total or partial disability is presumed to have developed the cancer during the course and scope of employment as a FF or EMT if:

(1) the FF or EMT:

(A) regularly responded on the scene to calls involving fires or fire fighting; or

(B) regularly responded to an event involving the documented release of radiation or a known or suspected carcinogen while the person was employed as a FF or EMT ; and



## Cancer Cases (Old)

Tex. Gov't Code Sec. 607.055 (continued)

(2) the cancer is known to be associated with fire fighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen, as described by Subsection (b).

(b) This section applies only to a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer.



## Cancer Cases (New)

Tex. Gov't Code Sec. 607.055 (continued)

(2) the cancer is described by Subsection (b).

(b) This section applies only to:

- (1) cancer that originates at the stomach, colon, rectum, skin, prostate, testis, or brain;
- (2) non-Hodgkin's lymphoma;
- (3) multiple myeloma;
- (4) malignant melanoma; and
- (5) renal cell carcinoma



## COVID-19 (2021)

Tex. Gov't Code Sec. 607.0545

(b) A COVID-19 presumption applies only to a person who:

- (1) is employed on a full-time basis;
- (2) is diagnosed with COVID-19 using an FDA-approved test; and
- (3) was last on duty not more than 15 days before the date of diagnosis.



### Rebuttal Evidence (New)

Tex. Gov't Code Sec. 607.058

A presumption under Section 607.053, 607.054, 607.055, or 607.056 may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter or emergency medical technician was a substantial factor in bringing about the individual's disease or illness without which the disease or illness would not have occurred.



### Rebuttal Evidence (New)

Tex. Gov't Code Sec. 607.058 (continued)

(c) In addressing an argument based on a rebuttal offered under this section, an ALJ shall make findings of fact and conclusions of law that consider whether a qualified expert, relying on evidence-based medicine, stated the opinion that, based on reasonable medical probability, an identified risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred. <sup>(1)</sup> <sub>SEP</sub>



### Deadline for Investigation (New)

Tex. Gov't Code Sec. 409.021(a-3)

A carrier is not required to comply with the 15 day deadline to pay or dispute a claim if, not later than the 15<sup>th</sup> day, the carrier has provided the employee and the division with a notice that describes all steps taken by the carrier to investigate the injury before the notice was given and the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury.

The commissioner shall adopt rules as necessary to implement this subsection.



### Funding (New)

Tex. Gov't Code Sec. 504.074

A pool or a political subdivision that self-insures may establish an account for the payment of death benefits and LIBs. Such an account may accumulate assets in an amount that the pool or political subdivision, in its sole discretion, determines is necessary in order to pay death benefits and LIBs. The Public Funds Investment Act does not apply to this account.

A pool or political subdivision investing or reinvesting the assets of such an account shall discharge its duties in the manner described in this section.

