

The New Firefighter Cancer Benefit Law

Q&A

CS/CS/SB 426, Chapter 2019-21, Laws of Florida (hereafter, “SB 426”) creates new benefits for eligible firefighters as an alternative to workers’ compensation coverage when diagnosed with specified cancers. Benefits include use of employer-sponsored health care plans, lump-sum cash compensation and employer reimbursement of treatment-related deductibles, co-pays or coinsurance. SB 426 also provides firefighters certain other disability retirement-related and death-related benefits for the diagnosis or treatment of specified cancers. **The new law takes effect July 1, 2019.**

Section I below addresses cancer treatment and cash compensation benefits. **Section II** addresses disability retirement-related and death-related benefits changes under the new law. **Section III** provides answers to other potential miscellaneous questions.

I. CANCER TREATMENT AND CASH COMPENSATION BENEFITS

1. Is my government entity required to comply with this new law?

This law applies to virtually all Florida governmental entities that employ full-time firefighters; and it specifically states the employer must bear the cost to provide all the newly created benefits. Also, an employer may not increase employee contributions to fund the benefits granted by this law.

The law defines “Employer” to mean the same entities included in §112.191, Fla. Stat., including a state board, commission, department, division, bureau or agency; a county; municipality; or other political subdivision of the state.

2. What are the required cancer treatment and cash compensation benefits?

The following cancer treatment and compensation benefits must be provided to eligible firefighters diagnosed with specified types of cancer:

- Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund;
- Timely employer reimbursement of the firefighter for any out-of-pocket deductible, copayment, or coinsurance costs arising from the cancer treatment;
- A one-time cash payout of \$25,000 upon initial diagnosis of a specified cancer.

3. What are the firefighter eligibility requirements to obtain benefits under the new law?

- Diagnosis of any of the 21 specified forms of cancer **on or after July 1, 2019**;
- 5-years or more of continuous full-time employment by the fire department prior to the cancer diagnosis;
- No tobacco product use for the 5-year period immediately preceding the cancer diagnosis;
- No employment in another position proven to create a higher risk of cancer for the 5-year period immediately preceding the cancer diagnosis.

4. Are volunteer and retired firefighters covered?

No. The law defines “Firefighter” to mean only those individuals “employed as a full-time firefighter within the fire department...,” thus excluding volunteers and retirees. However, if a retiree meets the conditions described below in Question 6., he or she may be eligible to benefits.

5. What are the specified forms of cancer covered by this law?

The 21 specified forms of cancer covered by this law include: bladder cancer, brain cancer, breast cancer, cervical cancer, colon cancer, esophageal cancer, invasive skin cancer, kidney cancer, large intestinal cancer, lung cancer, malignant melanoma, mesothelioma, multiple myeloma, non-Hodgkin’s lymphoma, oral cavity and pharynx cancer, ovarian cancer, prostate cancer, rectal cancer, stomach cancer, testicular cancer, and thyroid cancer.

6. Are firefighters entitled to receive this benefit even after they separate from employment with our fire department?

Yes. Provided the firefighter otherwise met the above-described eligibility criteria, elected to continue coverage in the employer-sponsored health plan or group health insurance trust fund after separation from employment and did not subsequently become employed as a firefighter following separation from the fire department, he or she remains entitled to seek the cancer treatment and lump-sum cash benefit for up to 10 years following separation from employment.

7. Is my workers’ compensation coverage related to this new law and its benefits?

No. Since the new law was enacted as an “alternative to pursuing workers’ compensation benefits...,” this law is not considered part of Florida’s workers’ compensation system (Chapter 440, Fla. Stat.). Workers’ compensation coverage may not provide any of the new firefighter cancer benefits.

Upon diagnosis of a specified cancer, an eligible firefighter must elect to receive this new statutory benefit or workers’ compensation benefits. We do not yet know how the law will treat a firefighter who attempts to use both workers’ compensation and the new statutory benefit simultaneously.

8. Will my employer-sponsored group health plan automatically provide necessary cancer treatment to an eligible firefighter?

Yes, this law does not impact how your health plan treats an employee seeking cancer treatment. However, the employer will be required to timely reimburse the firefighter in the event he or she incurs co-pay, coinsurance or deductible expenses as a result of the specified cancer diagnosis and treatment. As written, the law appears to first require firefighters to request employer reimbursement after eligible out-of-pocket expenses are incurred. The employer must then use reasonable diligence to process and pay the requested reimbursement request in a timely manner.

II. DISABILITY RETIREMENT AND DEATH BENEFIT CHANGES

1. Is my entity required to comply with this new law?

As noted in Section I. above, this law applies to virtually all governmental entities that employ full-time firefighters, and it specifically states the employer must bear the cost to provide all the newly created benefits. An employer may not increase employee contributions to fund the benefits granted by this law.

The law defines "Employer" to mean the same entities included in §112.191, Fla. Stat., including a state board, commission, department, division, bureau or agency; a county; municipality; or other political subdivision of the state

2. What are the new disability retirement and death benefits required under the new law?

- If the firefighter participates in an employer-sponsored retirement plan, the retirement plan must now consider the firefighter totally and permanently disabled in the line of duty if he or she meets the retirement plan's definition of totally and permanently disabled due to the diagnosis of cancer or circumstances that arise out of the treatment of cancer.
- If the firefighter does not participate in an employer-sponsored retirement plan, the employer must provide a disability retirement plan that provides the firefighter with at least 42% of his or her annual salary, at no cost to the firefighter, until the firefighter's death, as coverage for total and permanent disabilities attributable to the diagnosis of cancer which arise out of the treatment of cancer.
- If the firefighter participated in an employer-sponsored retirement plan, the retirement plan must now consider the firefighter to have died in the line of duty if he or she dies as a result of cancer or circumstances that arise out of the treatment of cancer.
- If the firefighter did not participate in an employer-sponsored retirement plan, the employer must provide a death benefit to the firefighter's beneficiary, at no cost to the firefighter or his or her beneficiary, totaling at least 42 percent of the firefighter's most recent annual salary for at least 10 years following the firefighter's death as a result of cancer or circumstances that arise out of the treatment of cancer.
- Firefighters who die as a result of cancer or circumstances that arise out of the treatment of cancer are now considered to have died in the manner as described in §112.191(2)(a), and all of the benefits arising out of such death are available to the deceased firefighter's beneficiary.
 - §112.191(2)(a) requires payment of \$50,000 (**increasing to \$75,000, effective July 1, 2019, due passage of another law CS/SB 7098**) when a firefighter, while engaged in the performance of his or her firefighter duties, is accidentally killed or receives accidental bodily injury which subsequently results in the loss of the firefighter's life, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted.

3. Can employers increase required employee contributions in connection with the disability retirement benefit or in-line-of-duty-death benefit granted by the new law?

No. Under the law, employers must supply all funding required to support the new benefits.

4. Are any of the 5-year qualifying period conditions required to qualify for the new disability retirement, in-line-of-duty-death or statutory death benefits?

No. Unlike the various 5-year qualifying period conditions placed upon the cancer treatment and cash compensation benefits described in Section I. above, the only requirement for the new retirement and death benefits are a specified cancer diagnosis and resulting disability or death.

III. MISCELLANEOUS

1. Will the new law apply retroactively to firefighters with specified cancer diagnoses?

No. The law contains no express provision stating retroactive application. It is limited to specified cancers diagnosed July 1, 2019 or later.

2. Can the cancer treatment and lump-sum cash benefits be directed to beneficiaries of the eligible firefighter?

No. The cancer treatment and compensation benefits are not treated as a benefit that may be directed to a firefighter's beneficiary. As written, the law entitles only the eligible firefighter to collect these benefits.

3. Is there a limit on the number of times an eligible firefighter may present specified cancer diagnoses and seek the cancer treatment and cash compensation benefits provided by the new law?

No. As written, the new law entitles an eligible firefighter to seek these benefits simply "upon a diagnosis of cancer..." There is no limit on the frequency of any such specified cancer diagnosis, nor upon the corresponding benefit entitlement.