

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON INSURANCE  
Lisa Calderon, Chair  
AB 699 (Weber) – As Introduced February 13, 2023

**SUBJECT:** Workers' compensation: presumed injuries

**SUMMARY:** Grants year-round, full-time lifeguards employed by the City of San Diego in the Boating Safety Unit the same workers' compensation presumptive coverages currently afforded to firefighters and public safety officers.

**EXISTING LAW:**

- 1) Provides for a comprehensive system of workers' compensation benefits to be provided to workers whose injuries or conditions arise out of or in the course of employment.
- 2) Provides that the injured worker must establish that their injury or condition was work related.
- 3) Provides that the injuries or conditions that are presumed to be work related for specified firefighters and public safety officers include:
  - a) Cancer; (Labor Code § 3212.1)
  - b) Heart trouble, pneumonia, or hernia; (Labor Code § 3212)
  - c) Tuberculosis; (Labor Code § 3212.6)
  - d) Exposure to a biochemical substance; (Labor Code § 3212.85)
  - e) Bloodborne infectious disease or methicillin-resistant *Staphylococcus aureus* (MRSA); and (Labor Code § 3212.8)
  - f) Meningitis. (Labor Code § 3212.9)
- 4) Provides that until January 1, 2025 post-traumatic stress disorder (PTSD) is presumed to be work related for specified firefighters and public safety officers. (Labor Code § 3212.15)
- 5) Establishes a presumption that skin cancer is a work related injury for lifeguards employed by specified state and local government agencies. (Labor Code § 3212.11)
- 6) Provides that the presumption of compensability in any of these circumstances is rebuttable.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Purpose.** According to the author:

San Diego lifeguards in the Boating Safety Unit deserve the same presumptive workers' compensation protections already afforded to San Diego firefighters and all other safety service personnel currently receiving the benefit of these presumptions. These highly specialized safety personnel willingly subject themselves to the same hazardous conditions as firefighters to protect others, and we should not expect to battle

administrative denials of medical claims when those same conditions cause them harm. This is a matter of equity and respect for those who put themselves in harm's way every day to protect us.

- 2) **City of San Diego Fire-Rescue Department Boating Safety Unit.** The presumptions that would be created by this bill would only apply to a small group of year-round, full-time lifeguards employed by the City of San Diego in the Boating Safety Unit. According to the sponsor of the bill, the California Teamsters Public Affairs Council, the Boating Safety Unit currently has 59 members and this number rarely fluctuates. The Boating Safety Unit is a specialized unit within the City of San Diego Fire-Rescue Department, but are technically classified as lifeguards.

The sponsor argues that these Boating Safety Unit lifeguards “are basically firefighters on the water” and therefore the state should treat them the same as firefighters by providing them the same workers’ compensation presumptions in statute. To that point, a review of materials provided by the sponsor shows that part of the job duties for the Boating Safety Unit include performing “marine fire-fighting functions.”

The Boating Safety Unit appears to be a unique group of lifeguards trained to deal with the hazards of working on Mission Bay. According to the sponsor’s letter in support of this bill “there is no other unit like it in California or the world.”

- 3) **Memorandum of Understanding (MOU).** If a local public agency wants to grant employees certain benefits of employment, it is able to accomplish that goal without need for a statutory change. In fact, since 2016 the City of San Diego has provided the majority of these presumptions to full-time lifeguards through their MOU with the City. The most recent extension of this agreement, which continued to include these presumptions, was signed in June 2022. The MOU agreement expires on July 1, 2024 and the parties will have to reenter negotiations. Although these presumptions have been awarded to full-time lifeguards employed by the City of San Diego since 2016 they still have to reenter negotiations on these benefits every few years.

Currently, full-time lifeguards employed by the City of San Diego receive presumptions for the following, as part of the collective bargaining process:

- a) Hernia and pneumonia;
- b) Tuberculosis;
- c) Bloodborne infectious disease or methicillin-resistant *Staphylococcus aureus* (MRSA) skin infection;
- d) Exposure to a biochemical substance; and
- e) Meningitis.

This bill seeks to make these presumptions permanent for members of the Boating Safety Unit and to add additional presumptions for cancer, heart trouble, and PTSD for members of that specialized unit.

- 4) **Presumptions.** Presumptions have never been intended to create work related injuries when, in fact, the injuries in question are not work related. Rather, presumptions of compensability have been adopted, some many decades ago, to reflect unique circumstances where injuries

or illnesses appear to logically be work related, but it is difficult for the injured worker to prove it is work related. There has clearly been some slippage over time from a rigorous application of this rationale, but it remains the underlying premise of presuming injuries or illnesses to be work related.

With very narrow exceptions for privately employed firefighters for public facilities, presumptions of compensability have been granted only to public safety officers – fire and peace officer employees. Thus, the costs of presumptions are borne only by state and local government employers, and only for the narrow class of employee, broadly referred to as public safety employees, whose jobs regularly place them in harm’s way.

- 5) **Prior Legislation.** AB 991 (Ward) of 2021, was held in the Assembly Insurance Committee. AB 991 would have granted lifeguards employed by the City of San Diego Boating Safety Unit the same workers’ compensation presumptive coverages that this bill seeks to provide.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Labor Federation, AFL-CIO  
California Nurses Association  
California Teamsters Public Affairs Council  
City of San Diego, District 1 Councilmember Joe LaCava  
Office of San Diego City Councilmember Raul Campillo  
San Diego City Councilmember Marni von Wilpert

##### **Opposition**

None on file.

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