

# Texas firefighters denied workers compensation for cancer

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More than 90 percent of Texas firefighters have been denied workers compensation for cancer treatments and missed time at work, according to a report released earlier this year by the Texas Department of Insurance.

Despite the passage of legislation in 2005 that was supposed to guarantee firefighters and emergency medical technicians (EMTs) health care and paid sick leave, these workers—who have an annual mean wage of \$53,480 and a starting salary of just \$27,500—face financial ruin even as they fight for their lives.

More than a decade ago the Texas legislature voted unanimously to grant a “presumption of cause” to firefighters and EMTs, who are routinely exposed to cancer-causing agents in the course of their work. The law was purportedly intended to relieve affected workers and their doctors of the need to demonstrate the exact, work-related cause of their cancer before beginning treatment and receiving other benefits. Postponing medical interventions for a legal determination of cause, which can take years to wind through the courts system, is a financial and physical death sentence.

The International Agency for Research on Cancer (IARC), has stated that there are three types of cancer definitely tied to occupational hazards faced by firefighters: prostate and testicular cancer, as well as non-Hodgkin’s lymphoma. The IARC has also noted that another 12 cancers are “possibly or probably” caused by firefighting.

The author of the Texas bill, physician and former state senator Robert Deuell, claimed, “It was intended for any cancer caused by firefighting exposure and not limited to any particular number of cancers.” However, the legislation included a few notable exceptions to “presumption of cause”, such as the personal use of tobacco products, pre-employment physical exams, and

a threshold of five years employment for eligibility. More importantly, legislators based the law not on “conclusive presumption,” which cannot be rebutted, but on “rebuttable presumption,” which can be.

Workers compensation companies, contracted by local municipalities to manage the cancer claims of firefighters and EMTs, have denied cancer claims routinely by making use of this legal standard. Houston attorney Mike Sprain told the *Houston Chronicle* that the workers compensation process is “so arduous that firefighters with cancer are unlikely to get a claim approved without an attorney.”

Only 20 percent of Texas claimants appeal their denied claims to the Department of Insurance.

The *Houston Chronicle* reported in July 2018 that the city of Baytown, home of some of Exxon’s largest petrochemical plants, is suing Patrick Mahoney, a battalion chief for the Baytown Fire Department. Mahoney had half of his thyroid removed because of cancer and regularly undergoes hormone treatment and blood workups. He is currently paying his expenses out-of-pocket.

After his workers compensation claims were initially being denied, Mahoney successfully appealed these decisions. In May 2018, however, the city of Baytown filed a suit against the firefighter in an effort to overturn these appeals and once again deny him medical coverage. Mahoney described this action a “betrayal” and a “slap in the face.”

The workers compensation industry in Texas, on the other hand, is legally allowed to set rates to ensure profitability. Employers can even opt out of providing the benefit if they claim to have some other method to supposedly cover injured workers. According to one web site, “workers’ compensation insurance (in Texas) is more profitable than the U.S. national average.”



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