



Avoiding Surprises Related to Injured-on-Duty Claims

By MICHAEL CUSACK

While state laws related to workers' compensation could fit into a clear, albeit lengthy, textbook, so-called injured-on-duty laws for public safety employees are less clear. Misconceptions about what these statutes actually do and don't mandate often lead to somewhat of a Wild West in terms of the different ways they are implemented across the Commonwealth.

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A Note About ‘Light Duty’

Can a public safety employee who is incapacitated from performing the full duties of his or her position be required to perform “light duty”? State law allows the requirements of Section 111F to be modified by a collective bargaining agreement, and thus the courts have held that a public employer and a police or fire union may negotiate over the conditions under which an employee may be required to perform “light duty.” While “light duty” collective bargaining provisions are not uncommon, some municipal managers have found that the value of such a provision can be offset by the costs of negotiating it as well as the limitations demanded by unions on the use of light duty.

While a group of statutes for “injured-on-duty” does exist, some are mandates and some are local-option. Many municipalities are not aware of which statutes are currently in effect for their community, much less the potential for liability exposure and the financial impacts they could face because of these laws.

With workers’ compensation, there is a set and functional process for deciding what is and isn’t covered if an employee is injured on the job. Municipalities can purchase an insurance policy for workers’ comp, then work to lower costs by implementing worker safety measures to prevent on-the-job injuries. Although medical expenses for a particular workers’ comp case could continue for years to come, the city or town might never see such costs because liability was transferred to the insurer.

With public safety employees, it’s a different story. As an employer, a municipality has an obligation to cover any injury that occurs on the job, but that’s where the similarity with workers’ comp ends. While cities and towns may purchase insurance contracts that will provide unlimited protection against workers’ comp claims, a similar product

does not exist for injured-on-duty claims. If a municipality does have the ability to transfer liability to its insurer, it is typically for a limited time, and the injured person’s expenses could transfer back to the city or town later—sometimes many years later.

Consider a part-time police officer who is not participating in a pension plan and who takes action in the line of duty that leads to long-term injury. What if the town has limited insurance and quickly exhausted all medical coverage? Each year, the town must go back to town meeting to find funds to pay the former officer’s medical bills. In addition, the town could still be responsible for paying his wages, cutting him a check every month even though he is not working. The financial impact on a municipality, particularly on a smaller city or town, could be quite significant.

Whereas workers’ comp claims are approved or denied by a state-run independent board, no such board exists in the public safety realm. Depending on a city or town’s governing structure, either the select board or mayor or (fire or police) chief could be responsible for making claims-related decisions. Think of how

a single gatekeeper managing all claim acceptance or denial could not only foster potential conflicts of interest or favoritism, but could also open the door for vast liability exposures.

The lack of an independent board to review cases, along with the potential for such a wide range of medical claims—some of which may be indirectly related to the job, or not related at all—create such a huge risk for insurance companies that they tend to offer only limited coverage in this arena.

State Mandates

State laws lay out specific mandates for employee wages, medical expenses and funeral expenses. The most noteworthy is Chapter 41, Section 111F. Whenever a police officer or firefighter is injured in the line of duty without fault of his or her own, Section 111F requires that he or she be granted leave without loss of pay for the period of incapacity until (1) he or she is retired or pensioned, or (2) a physician designated by the appointing authority determines that his or her incapacity no longer exists.

Although police officers and firefighters often refer to benefits payable to them

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as “111F,” there are additional relevant sections of state law that set mandates, including the following:

- Chapter 32, Section 85H, which provides a method for wage calculation for volunteer and call public safety personnel (see sidebar, next page)

- Chapter 32, Section 100A, which provides death benefits to the family of a public safety employee killed in the line of duty

- Chapter 41, Section 100, which requires a municipal employer to indemnify a public safety employee for medical expenses related to an injury suffered while acting in the performance and within the scope of his or her duty without fault of his or her own

- Chapter 41, Section 100G, which obligates the city or town to pay funeral expenses, up to \$2,000



In reality, Section 111F includes none of the cost-containment items traditionally associated with the workers’ compensation system.

In addition, unrelated to Section 111F, the Commonwealth makes specific legal presumptions for police officers and firefighters for medical conditions that develop affecting the heart and lungs, as well as for cancer. If a police or fire employee does not have a condition related to heart or lung disease or cancer when he or she starts working for the city or town, but then develops a covered condition during the time he or she is employed, state law mandates that these medical expenses must be covered. If the city or town believes it is not liable, the only option is to file a lawsuit and push the case through the court system.

Because of the focus on lost wages, Section 111F has been compared to workers’ comp and is considered by some to be a form of “comp light.” In reality, 111F includes none of the cost-containment items traditionally associated

with the workers’ comp system, such as return-to-work policies, prior injuries, termination of benefits, or independent medical examinations. Therefore, it isn’t comparable to workers’ comp at all.

Local-Option Statutes

Other relevant sections of state law are local options, meaning it is up to the local government entity to adopt the particular measure. In many cases, local government officials and public safety chiefs may not be aware of what sections have or haven’t been adopted by the city or town, potentially leading to unpleasant surprises when a claim is filed and they must assume liability and provide coverage, possibly indefinitely.

The key local-option sections include:

- Chapter 32, Section 85H½, which provides a comparative method of wage calculation for volunteers and call officers

injured in the line of duty (average salary of a first-year permanent firefighter or police officer, as determined by a survey of three surrounding towns)

- Chapter 41, Section 100B, which allows a municipality to indemnify a retired fire or police employee for medical expenses incurred after his or her retirement that are related to the injury for which he or she receives an accidental disability retirement

- Chapter 41, Section 111M, which allows a municipality to grant paid leave to an emergency medical technician injured in the line of duty

- Chapter 41, Section 111N, which allows a municipality to indemnify an emergency medical technician for medical expenses due to a job-related injury

In order to be in effect, each of these statutes must be accepted locally. The municipality, however, may not be aware of the full ramifications of adopting these measures. For example, in cases where 100B has been adopted, municipalities have later been held fully responsible for medical costs, without the option of transferring to any other entity, even after the injured employee retires. In municipalities where this section has *not* been adopted, however, medical costs for the injured employee can eventually be transferred to the state retirement and pension system.

Special Considerations for Call, Reserve, Special or Intermittent Personnel

A special area of concern for some municipalities is their direct exposure for the long-term injury of a call firefighter or reserve, special or intermittent police officer. Under Chapter 32, Section 85H, the selectmen may retire any such employee who becomes permanently disabled by job-related injuries. In such cases, the employee would be paid two-thirds of the annual compensation paid to a first-year member of the municipality's permanent fire or police force, as applicable; if there are no permanent members of the fire or police force, the pension is limited to \$3,000 per year.

If a call firefighter or member of a volunteer fire company or a reserve, special or intermittent police officer is disabled by an injury suffered in the line of duty and is unable to perform the usual duties of the "regular occupation" that he or she held at the time of injury, and that regular occupation constituted a substantial source of income, the employee shall be paid for the period of such incapacity the compensation for a permanent member of the fire or police force in the first year of service or, if there are no permanent members of the police or fire department, \$3,000 per year.

It is important to note that a call firefighter or reserve, special or intermittent police officer may be eligible for benefits under Chapter 41, Section 111F, and under Chapter 32, Section 85H, for the same injury suffered in the line of duty. Under Section 111F, the employee would be eligible for his or her regular compensation as a call firefighter or reserve, special or intermittent police officer. The amount of Section 111F compensation would depend upon the regularity of that employee's employment. For example, if the individual only worked one shift per week as a special police officer, his or her Section 111F compensation would be limited to one shift's compensation per week. If, however, at the time of the injury, the individual held regular outside employment that constituted a substantial source of income, and the injury prevented him or her from performing that outside employment, he or she would also be eligible for first-year police officer's compensation (or \$3,000 per annum) under Section 85H.



What Municipalities Can Do

Before an unexpected exposure arises, cities and towns should thoroughly assess which local-option sections of state law related to injured-on-duty personnel have been adopted and which have not. Municipalities can also conduct an inventory of their current insurance coverage, research potential companion insurance policies, and determine if any type of additional policy would be worth the investment (or if being self-insured is more affordable in the long run).

Available insurance products can offer coverage for medical expenses up to \$500,000, reimbursement of lost wages up to \$2,000 per week, excess medical coverage

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up to \$1 million, and single-event accident, death and disability benefits up to \$600,000. Communities that prefer to remain self-insured may purchase claims management services, including medical bill review and medical case management.

Finally, municipalities may want to consider incorporating potential injured-on-duty claims—and their associated financial impact—as part of long-term municipal budget and contingency planning. 🌟