

Workers Compensation PFAS Claims – Will Subrogation Apply?

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Can workers' compensation carriers bring subrogation actions for payments made to firefighters allegedly made sick from exposure to PFAS? A number of states have adopted [statutory presumptions](#) that the cause of firefighters' cancers is from exposure to a host of different carcinogens encountered during the course of their employment. Although the science is still developing on the impacts of exposure to per- and polyfluoroalkyl substances ("PFAS") on human health, PFAS compounds have been used in both firefighting foams and firefighters' personal protective equipment for decades. There is a growing body of scientific data to indicate that exposure to these compounds in high enough doses can cause a number of diseases, including testicular cancer and kidney cancer. But how will this impact Workers Compensation PFAS claims moving forward?

For states with a statutory firefighters' presumption of cause of cancer in place, firefighters are entitled to workers' compensation benefits for their medical bills and other expenses. If workers' compensation insurers are able to link a firefighter's disease in a particular instance to his or her use of PFAS-containing personal protective equipment and/or firefighting foams, can they hold PFAS manufacturers and distributors responsible for reimbursing the insurer for workers' compensation payments made? They can certainly try, although it will be difficult.

Although an epidemiological study established a causal link between PFAS exposure and development of both testicular cancer and kidney cancer, among other diseases, there are also numerous other causes of these diseases, including exposure to the wide variety of carcinogens firefighters are exposed to over the course of their careers. Therefore, the workers' compensation insurer would have to show that the exposure to the PFAS-containing products was a substantial contributing cause of this particular firefighter's illness to have any hope of holding the manufacturers and distributors accountable for reimbursement of costs through subrogation. More scientific studies are needed to better understand the level of PFAS necessary to cause these diseases, the route of exposure, and other aspects of PFAS-related disease causation. Whether workers' compensation carriers can be reimbursed for payments made to firefighters allegedly made sick from exposure to PFAS remains to be seen.

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