



THE PRESUMPTIONS OF WORK-RELATED INJURY SHOULD BE EXTENDED TO ALL SAFETY WORKERS

By Scott O'Mara

In the mid-1930s, California legislators recognized that safety employees faced a unique risk of harm through their work as peace officers and firefighters. This recognition was reflected in legislative changes establishing various presumptions of work-related injury for specific safety members. The initial legislation — directed towards hernias — stated that if a peace officer or firefighter developed or manifested a hernia during their period of service as a peace officer or firefighter, it was presumed to be job-related.

In 1939, the presumption of work-related injury was extended to heart trouble and pneumonia for firefighters of the State Division of Forestry. Another legislative change occurred that same year with the enactment of Labor Code §3212.5, which stated that for certain police departments heart trouble and pneumonia would be considered job-related. This section of the Labor Code was expanded in 1943 to include officers of the California Highway Patrol, and again in 1949 to include state fish and game wardens.

Additional changes occurred in 1955 for specific members of the Sheriff's Office, and in 1957 tu-

berculosis was added as a new disease presumption for specific peace officers. Further changes occurred in 1959, 1961, 1971 and 1972, and have continued up to the present, including the William Dallas Jones Cancer Presumption Act of 2010, which expanded the time parameters allowed for application of the cancer presumption.

However, while these legislative enactments reflect the public policy of providing additional compensation benefits for certain public employees — in recognition of the vital and hazardous service they provide to the public — by easing the burden of proof to establish job-related causation of injury, *they unfortunately exclude other significant public employees performing similar, equally hazardous services.*

As the reader is aware, in the past two decades, situations with grave consequences for students, teachers and parents have occurred on school campuses, ranging from multiple murders and shootings to gang activity. The work of the school police — whether it be at a four-year college, two-year college, high school or middle school — puts them in situations and at events which are occupationally demanding from both the aspect of physical activities (such as engaging in apprehension, detention and physical methods of arrest) and the aspect of emotional challenges (such as dealing with shootings, gangs and unhappy parents).

In addition to the expanded risks to campus officers, there has been a dramatic shift in the dangers to which county probation officers are exposed in their work. For example, it is common now for these officers to be continually exposed to felons, presenting situations of high risk to both the officers and the public.

In conclusion, the demands of all these safety professionals place them at risk through routine exposure to the hazards and stress inherent in their work settings. Yet, under the present California law, county probation officers, city school police, community college police and California state university police do not have the full protection that is afforded the rest of our safety groups. *The lack of protection for these excluded safety groups needs to be rectified through legislative actions recognizing the extraordinary risks and hazards that all public safety officers face.* This protection should not be limited to just a select number of groups. Moreover, once rectified, the needed legislative changes should be applied retroactively to pending cases.

The following is derived from case law defining the purpose behind the enactment of the various presumptions, the legislative history, and the expressed frustration of the courts due to the disparity in application of the presumptions as they have evolved legislatively.

The foremost purpose of the statutory presumptions is to provide additional compensation benefits to certain public employees who provide vital and hazardous services by easing the burden of proof of industrial causation. The presumption is a reflection of public policy, implemented by shifting the burden of proof in an industrial injury case. (Zipton v. WCAB (1990) 55 Cal. Comp. Cases 78.)

Commentators have suggested that the distinctions appearing in the series of legislative enactments reflect only the Legislature's response to recurring needs by particular groups. As noted in the case of Rowland Saal in 1975 (Saal v. WCAB, 40 Cal. Comp. Cases 456):

"Beyond question, these statutes show a purpose of the Legislature to provide additional benefits for certain public employees whose services are both vital to the public interests and hazardous. (Citations)

"All of the persons benefitted are in the general fields of law enforcement or firefighting, but by no means are all public employees in that field included. A casual review of the classes of peace officers listed in Penal Code Sections 830.1 through 830.12 indicates that, depending on how the respective classifications in the Penal and Labor Codes are interpreted, there are somewhere between 26 and 34 kinds of peace officers who are not benefitted at all by any of the sections in the 3212-3213 series."

"It has been said that the provisions with respect to heart trouble are a recognition that such disease is caused or aggravated by stressful work. (Citations omitted). But the correlation between occupational stress and heart trouble does not explain why fish and game wardens and University of California campus police have the benefit of the non-attribution rule, while correctional officers in the state prisons do not."*

In 2001, the law changed to give state correctional officers the heart presumption, etc. In 2004, Labor Code §4663(e) provided non-attribution to **all presumptions.*

"There is even greater difficulty in understanding why the special benefits for hernia, pneumonia and tuberculosis are granted to some employees and not to others."

The Saal case in 1975 underscored the inequity with respect to the heart presumption. Saal was a California State University police officer. He suffered an acute heart attack and sustained permanent disability of 73%. However, Saal was awarded a disability rating of only 7 1/4% based on medical evidence that the stress of his job played only a small role in accelerating his heart disease, and, as a member of the California State University police department he was not entitled to the statutory presumption for heart trouble because the pertinent statute specifically extended the presumption only to the University of California police — not the California State University police.

The attached legislative history provides an overview of the Labor Code provisions focusing primarily on the presumptions affecting public safety employees noted on the accompanying chart.



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THE LAW OFFICES OF
SCOTT A. O'MARA
O'MARA & PADILLA

2370 Fifth Ave.

San Diego, CA 92101

4200 Latham St. – Ste. B
Riverside, CA 92501-1766

320 Encinitas Blvd. – Ste. A
Encinitas, CA 92024

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858-467-1199

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