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safetyofficerattorneys.com ★ www.law1199.com ★ SCOTT A. O'MARA, THOMAS I. HAMPTON
BETH A. WILLIAMS, DANIEL J. PALASCIANO & JOSEPH P. HEATHMAN

CONTINUATION OF 420-WEEK EXTENSION FOR FAMILY MEMBERS OF DECEASED SAFETY OFFICERS TO ACCESS DEATH BENEFITS IS NEEDED

BY: SCOTT A. O'MARA

Job-related injuries may allow for several remedies regarding the need for medical care, the nature and extent of same, and time off from work for the injured worker. Job-related injuries also may provide separate and independent death benefits to the worker's dependents in the event the worker dies as a result of the work injury, but specific legislation sets forth that an injured worker's dependents' opportunity to procure death benefits is limited to no more than one year from the date of the worker's death, or 240 weeks from the date of injury. The two measures — the date of death and the date of injury — are separate and distinct and are measured independently.

In 2015, the 240-week limit for surviving family members to claim Workers' Compensation death benefits after an injured worker's death was changed to 420 weeks if the death is related to cancer, blood-borne infectious disease or tuberculosis. However, according to Labor Code §5406.7, the extension of the time limit to 420 weeks for an injured worker's family to claim death benefits following the worker's death is to sunset as of January 1, 2019, unless an extension is enacted before that date.

At this time, Senate Bill 1086, introduced by Senator Atkins (and co-authored by Senators Cannella, Dodd, Jackson, and Newman; and Assembly Members Aguiar-Curry, Bloom, Bonta, Cunningham, Flora and Limon), sets forth an amendment to Labor Code §5406.7. This amendment, introduced on February 12, 2018, recognizes the unique areas of risk law enforcement officers have, and continues the 420-week extension enacted in 2015 for safety officers who succumb to cancer, blood-borne infectious disease or tuberculosis.

The rationale for these particular systems allowing a larger window of time to seek benefits is the following, as stated in SB 1086:

“A public safety officer spends his or her entire career routinely tackling complicated, life-threatening scenarios. Most of these scenarios involve exposure to dangerous carcinogens that can have a devastating, cumulative effect, including the manifestation of occupational cancer.”

SB 1086 further states:

“Existing law grants a fallen public safety officer’s family a modest workers’ compensation death benefit in recognition of the threats public safety officers face on the job, and the significant sacrifices made by the families they leave behind when one falls in the line of duty.”

SB 1086 specifically acknowledges:

“Unless this bill is enacted, the law will revert back to the arbitrary cap of 240 weeks, foreclosing the opportunity for the survivor of a public safety officer diagnosed with a fatal job-caused illness to file a death benefits claim beyond that 240-week period.”

The proposed legislation also states:

“Few stricken public safety officers are able to live beyond this arbitrary and archaic 240-week death clock, but, if they do, they face a cruel game of ‘beat the clock’ in order for their surviving family to receive even a modest bit of comfort.”

It does not take a significant analysis to recognize the ongoing exposures which firefighters and peace officers have on a daily basis that lead to disease and subsequent death.

SB 1086 further states:

“In enacting this bill, it is the intent of the Legislature to ensure that these grieving families continue to receive adequate time to file a claim for job-related death benefits without an arbitrary and devastating penalty.”

The changes which occurred in 2015 changing the extension period for requesting death benefits to 420 weeks in cases involving one of the illnesses specified — cancer, blood-borne infectious disease or tuberculosis — also was a recognition that these diseases may have an extensive latency period before their development and manifestation, and may lead to death. Cancer, particularly, can involve a process which has been ongoing for 10 or 20 years before it is actually diagnosed. Thus, the extension from 240 weeks to 420 weeks also constitutes the recognition that some disease processes are insidious and progressive and ultimately lead to the death of the injured safety officer. As the legislative notes reflect, the 420-week extension is an attempt to help the surviving dependents of deceased safety officers.

The elimination of the January 1, 2019 sunset date for Labor Code §5406.7 is needed to protect those who protect and serve California citizens and residents.



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THE LAW OFFICES OF
SCOTT A. O'MARA

2370 Fifth Ave.
San Diego, CA 92101-1611

4344 Latham St. – Ste. 250
Riverside, CA 92501-1766

1-800-LAW-1199
(1-800-529-1199)
951-276-1199

www.law1199.com

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