

## EMPLOYMENT SERVICES ALERT

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### Ohio Governor Kasich Signs into Law Presumption for Cancer Incurred During Work Activities

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On January 4, 2017, Governor John Kasich signed the Michael Louis Palumbo, Jr., Act (The Act) into law, which provides a rebuttable presumption that a firefighter who is disabled due to certain cancers, contracted the same, while performing his or her duties as a firefighter. The Act specifically amends several portions of the Ohio Revised Code, including sections 742.38, 4123.57, and 4123.68.

The Act establishes certain thresholds which must be met in order to qualify for this presumption — the firefighter must be disabled as a result of cancer and have at least six years of “hazardous duty” (defined as duty performed under circumstances in which an accident could result in serious injury or death, such as duty performed on a high structure where protective facilities are not used or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist). This presumption can be rebutted if there is evidence that the firefighter:

- incurred this cancer before becoming a member of the fire department;
- uses tobacco products or there are other conditions presenting an extremely high risk for the development of the cancer alleged;
- was not exposed to a qualifying cancer;
- is 70 years or older; and
- has been removed from hazardous duty for twenty years or more

It is worth noting that firefighters and police officers were already afforded greater workers’ compensation benefits through section 4123.68. Prior to the January 4, 2017, amendment, R.C. 4123.68 (W) specifically provided additional protections to firefighters and police officers for disability or death from a cardiovascular, pulmonary, or respiratory disease assuming said exposure occurred from heat, smoke, toxic gases, chemical fumes, or other toxic substances in course and scope of his or her employment in this state preceding their disablement after January 1, 1967. Section .68 further provided for an eight-year statute of limitations as opposed to the typical two-year statute of limitations. Thus, The Act as now amended, merely broadens the available qualifying disabling diseases and extends the statute of limitations.

What this means for employers is that firefighters will now have up to 20 years, possibly post-employment, to bring a workers’ compensation claim for cancer assuming that the individual worked at least six years of hazardous duty. Providing defenses to such a claim will prove to be a difficult task the further away the individual is from the alleged exposure or last date of employment.

If you have any questions about this topic, please contact one of the listed Roetzel attorneys.

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