



Workers' Compensation Laws **For Firefighters**

August 2005

For more information, please contact:
Mike Voigt or Tim Wahlen at 1-800-777-5033 or (701) 328-3800



**Workforce Safety
& Insurance**
To us, it's personal.

"Our mission is our passion.
Our passion is
North Dakota's workforce.
To us, it's personal."

TITLE 65
VOLUNTEER FIREFIGHTERS PROVISIONS

65-01-02. Definitions. In this title:

10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

- (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.

65-06-01. Volunteer firefighter, emergency or disaster volunteer, community emergency response team member, in training defined. The term "volunteer firefighter" means any active member of an organized volunteer fire department of this state and any other individual performing services as a volunteer firefighter for a municipality at the request of the chief or other individual in command of the fire department of that municipality or of any other officer of that municipality having authority to demand service as a firefighter. Firefighters who are paid a regular wage or stipend by the municipality for serving as a firefighter, or whose entire time is devoted to service as a firefighter for the municipality, for the purpose of this chapter, are not volunteer firefighters.

The term "emergency or disaster volunteer" means any individual serving without remuneration who is actively engaged in training to qualify as a disaster emergency worker or is responding to a hazard, emergency disaster, or enemy attack on this country,

and who is registered with the disaster emergency organization of a municipality, which has been officially recognized by the director of the state division of homeland security.

The term "in training" means only those periods of time, during which an emergency or disaster volunteer is receiving instruction, or is engaged in exercises or operations, in preparation for qualification as a disaster emergency worker in the event of a hazard, emergency, disaster, or enemy attack on this country.

The term "community emergency response team member" means an individual registered as a community emergency response team member with the appropriate authority. For purposes of this chapter, a community emergency response team member is acting as a community emergency response team member only when the individual is receiving approved community emergency response team training or is acting as a member of a community emergency response team in an emergency or disaster.

Upon request of the organization, the disaster emergency organization of a municipality shall provide the organization with its roster of registered community emergency response team members.

The term "municipality" when used in reference to emergency or disaster volunteer means the state, cities, counties, municipalities, districts, or any other geographical entity of this state. This definition is not in any way intended to alter any interpretation or ruling in regard to the use of the term "municipality" when used in reference to volunteer firefighters.

65-06-02. Volunteer firefighter, emergency or disaster volunteer, and community emergency response team member declared employees - Covered by workforce safety and insurance - Termination. Volunteer firefighters, emergency or disaster volunteers, and community emergency response team members are employees of the municipalities which they serve and are entitled to the same protection and rights under the provisions of this title as are full-time paid employees of those municipalities.

65-06-03. Compensation benefits - How determined.

The basis of compensation and benefits to be paid to a volunteer firefighter, an emergency or disaster volunteer, or a community emergency response team member under the terms of this

chapter shall be determined in accordance with the provisions of section 65-05-09; provided, however, that the weekly wage of the claimant shall be determined from a computation of income derived from the claimant's business or employment.

65-06-04. Assessment of premiums. For the purpose of making assessments of premiums to be charged against municipalities for protection of volunteer firefighters, emergency or disaster volunteers, and community emergency response team members, the organization shall make such survey as may seem advisable to ascertain the probable annual expenditures necessary to be paid out of the fund to carry out the provisions of this chapter, and shall fix the annual charges and assessments which shall be made against municipalities employing volunteer firefighters, emergency or disaster volunteers, and community emergency response team members. Such charge shall be a fixed sum for each one hundred of the population of the municipality involved, the same to be uniform as to all such municipalities but in proportion to the population thereof. In determining the amount of premium charge, the organization may apply the system of experience rating provided in this title, as applied to other risks. The organization may also establish a minimum charge or assessment to be applicable to municipalities where the fixed rate or charge multiplied by the number of hundreds of the population thereof would amount to less than the amount of such minimum charge or assessment. The population of a municipality shall be that shown by the latest official North Dakota state or United States government census, whichever may be the later.

65-06-05. Reimbursement by state for liability in excess of premiums collected. Whenever liability on claims against the fund credited to the classification of volunteer disaster emergency trainees exceeds the amount of premiums paid into such fund, such excess liabilities shall be a general obligation of the state of North Dakota and be reimbursed to the organization for credit to the workforce safety and insurance fund by legislative appropriation.

REQUIREMENTS OF FULL-TIME PAID FIREFIGHTERS OR LAW ENFORCEMENT OFFICERS

65-01-15. Yearly documentation required for firefighter and law enforcement officer. Except for benefits for an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under section 65-01-15.1, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years.

65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the

individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.



**Workforce Safety
& Insurance**

To us, it's personal.

Main Office:

1600 East Century Avenue, Suite 1
PO Box 5585

Bismarck ND 58506-5585

701.328.3800 1.800.777.5033

Main Fax: 701.328.3820

Fraud & Safety HotLine:

1.800.243.3331

Fargo Service Center:

2601 12th Avenue S.W.

Fargo ND 58103-2354

701.298.4988

Fax: 701.298.4999

www.WorkforceSafety.com

"Our mission is our passion.

Our passion is

North Dakota's workforce.

To us, it's personal."