

DOES COVID-19 QUALIFY FOR LINE-OF-DUTY DEATH BENEFITS?

Much has been written recently regarding benefits for first responders who die from COVID-19. And, most writers have correctly reported that COVID-19 is a qualifying cause of death for Public Safety Officers' Benefits (PSOB – the line-of-duty death benefit provided by the federal government for most first responders).

Our concern is that many have incorrectly interpreted that to mean that if a first responder dies from COVID-19, his/her family will most certainly receive PSOB and other line-of-duty death benefits.

But it is really not that simple.

Just as when a police officer is assaulted and killed, a firefighter dies from injuries suffered in a fire, or an EMS worker dies from injuries sustained in a crash, the Department of Justice (DOJ) will require documentation to show that the individual and his agency meet requirements of eligibility for PSOB and that the injury was sustained in the course of line-of-duty activity or action. In that regard, COVID-19 is not different.

However, COVID-19 *is* different in that documenting that it was indeed an 'injury sustained in the course of line-of-duty activity or action' will, in most instances, be much more difficult. More specifically, documenting that the illness was contracted in the line-of-duty and not just as a result of the same 'community spread' risks of every citizen will very likely be a challenge.

Fortunately, the standard of proof required by the DOJ for approval of PSOB is simply 'a preponderance of the evidence' – or, in other words, documentation that 'it is more likely than not' that the illness was contracted in the line-of-duty. But this is not a standard that should be taken lightly – especially with such widespread contagion in the general population. The DOJ will not *assume* that a first responder who contracted the illness did so in the line-of-duty. Reasonable documentation must be provided.

Keep in mind also that, at least currently, there are no PSOB presumptions regarding COVID-19. In other words, where PSOB and most states have presumptive provisions for heart attacks (meaning: if a heart attack occurs within specific parameters of certain types of line-of-duty activity, it is presumed to have occurred in the line-of-duty), there are currently no COVID-related presumptions for PSOB. (Just this week, Missouri enacted provisions of presumption for state Workers' Compensation benefits. Other states might follow. But it will still have no impact on PSOB determination.)

It is important to recognize that, if PSOB is approved, it will mean a \$365,670 benefit to the first responder's family as well as educational benefits for a spouse and any dependent children. It is, therefore, imperative that every effort is made by agencies and first responders to document all *known* exposures to the coronavirus as well as any *possible* exposures. Such documentation will very likely prove equally beneficial for other benefits as well – such as workers' compensation benefits, retirement system benefits, state line-of-duty death benefits, etc.

Naturally, agencies have policies and procedures in place for documenting certain exposures. But it would behoove all first responders to maintain a personal journal as well to record *all* activity – known exposures, potential or suspected exposures, etc. in addition to official records. It could even be helpful to document off-duty efforts of social distancing.

We all must admit that there is still a lot that is unknown about the virus. And, activities that might not rise to a level now for official documentation could become relevant later. In a worst-case scenario, extra documentation could make the difference between denial and approval of hundreds of thousands of dollars of benefits for a family.

As the saying goes: Document. Document. Document!

One final note: Not all first responders are eligible for PSOB. In particular, private for-profit EMS and industrial fire services are typically not covered. If unsure, we encourage you to contact us or visit www.PSOB.gov.

Note: There are tools available in the fire service to document exposures of all types. One of the more highly recommended is available at <https://i-psdi.org/nfors-fire-exposure.html>

UPDATE 4/9/2020: The Department of Justice has issued a 'guidance document' indicating that a degree of presumption will be applied to claims made pursuant to deaths resulting from COVID-19. However, the document still focuses on the importance of documentation to support the claim. Specifically: *"As the PSOB Office receives claims based on COVID-19 exposure, it will work closely with survivors, officers, and agencies to obtain whatever evidence may be needed to support each claim, through all available information, including incident reports and related documents."*