



To: VFIS of Texas ESD Clients

From: Tom Newby, Director, Employee Benefits

Re: Texas HB471

As many of you are aware, the Texas State Legislature recently passed HB471. This new law is to become effective September 1, 2023. For those of you not aware of HB471, I am attaching a copy for you. In short it requires that when a member of a department, whether fire, police or emergency medical personnel, goes out on a disability that is Line of Duty related, the department is responsible for replacing 100% of the member's income for the first twelve months.

Our reading of HB471, in its current form, is not fiscally or administratively feasible to be implemented. We have contacted SAFE-D and ask that their legal and legislative persons request clarification of certain issues as well as to request an implementation period of 12 months. Reasons for not seeing HB471, in its current form, as fiscally or administratively feasible are listed below.

1. Line of Duty Disability is typically a Workers Compensation (WC) claim. In Texas, WC replaces 70% of the disabled member's income. However, WC only covers the standard 40 hours a week and not the overtime that most members financially depend on. Did the Legislature mean to only extend the additional coverage to 40 hours or 53 hours?
2. WC, Employer paid Group Disability as well as Federal Social Security Disability ALL, coordinate benefits payable as well as any monies paid by an employer while a member is on claim. This means that at no time would the member, under the current system receive more than 70% of their pre-disability income.

In order to get this to work we need to obtain a ruling from the Texas Department of Insurance (TDI) that would allow WC and Employer paid Group Disability to issue policies that do not coordinate/offset benefits with one another or with monies paid by the department in addition to the benefits paid by insurance.

3. The Texas Mutual WC policy covers the lost income from all work sources of a member. For example, if a member works at two departments, (Dept. A and Dept. B) and becomes disabled at Dept. A, the Texas Mutual WC will not only replace the 70% of the members income from Dept. A, but also up to the 70% of lost income from Dept. B.

HB471 does not address whether Dept. A in the example above would also be liable for the lost income balance from Dept. B that is not covered by the WC.

4. HB471 also didn't provide guidance on part-time members versus fulltime members. Employer paid Group Disability is established at a minimum for those working an average of 20 hours or more a week. Having said that, there isn't currently a means to insure those members working less than 20 hours except for what WC pays.
5. HB471 does not specify the size of the department this applies to. While larger departments within major metros may have the monies to pay premiums to insure against this risk, smaller departments simply don't have the tax base to pay additional premiums. We suggest using the same measurement that was applied to HB2171, which is those that serve wholly or in part a county with a population of 150,000 or greater.

The VFIS disability pool could provide an insured solution by not having to coordinate our policies with WC. This would require TDI granting the Administrative Ruling.

My hope is that this will provide some insight in to the current issues surrounding HB471 and what is needed to make the goal of HB471 a reality.



Bill Text: TX HB471 | 2023-2024 | 88th Legislature | Enrolled Texas House Bill 471 (*Adjourned Sine Die*)

Bill Title: Relating to the entitlement to and claims for benefits for certain first responders and other employees related to illness and injury.

Spectrum: Bipartisan Bill

Status: (*Passed*) 2023-06-12 - Effective immediately [HB471 Detail]

Download: Texas-2023-HB471-Enrolled.html

H.B. No. 471

AN ACT

relating to the entitlement to and claims for benefits for certain first responders and other employees related to illness and injury.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Local Government Code, is amended by adding Chapter 177A to read as follows:

CHAPTER 177A. ILLNESS OR INJURY LEAVE OF ABSENCE FOR FIREFIGHTERS, POLICE OFFICERS, AND EMERGENCY MEDICAL SERVICES PERSONNEL OF POLITICAL SUBDIVISION

Sec. 177A.001. DEFINITIONS. In this chapter:

(1) "Emergency medical services personnel" means a person described by Section 773.003, Health and Safety Code, who is a paid employee of a political subdivision.

(2) "Firefighter" means a firefighter who is a permanent, paid employee of the fire department of a political subdivision. The term includes the chief of the department. The term does not include a volunteer firefighter.

(3) "Police officer" means a paid employee who is full-time, holds an officer license issued under Chapter 1701, Occupations Code, and regularly serves in a professional law enforcement capacity in the police department of a political subdivision. The term includes the chief of the department.

Sec. 177A.002. EFFECT ON LABOR AGREEMENTS. Notwithstanding any other law, including Section 142.067, 142.117, 143.207, 143.307, 143.361, 147.004, or 174.005, a collective bargaining, meet and confer, or other similar agreement that provides a benefit for an ill or injured employee must provide a benefit that, at a

minimum, complies with this chapter.

Sec. 177A.003. LINE OF DUTY ILLNESS OR INJURY LEAVE OF ABSENCE. (a) A political subdivision shall provide to a firefighter, police officer, or emergency medical services personnel a leave of absence for an illness or injury related to the person's line of duty. The leave is with full pay for a period commensurate with the nature of the line of duty illness or injury. If necessary, the political subdivision shall continue the leave for at least one year.

(b) At the end of the leave of absence under Subsection (a), the governing body of the political subdivision may extend the leave of absence at full or reduced pay.

(c) If the firefighter, police officer, or emergency medical services personnel is temporarily disabled by a line of duty injury or illness and the leave of absence and any extension granted by the governing body has expired, the person may use accumulated sick leave, vacation time, and other accrued benefits before the person is placed on temporary leave.

(d) If the leave of absence and any extension granted by the governing body has expired, a firefighter, police officer, or emergency medical services personnel who requires additional leave described by this section shall be placed on temporary leave.

Sec. 177A.004. RETURN TO DUTY. (a) If able, a firefighter, police officer, or emergency medical services personnel may return to light duty while recovering from a temporary disability. If medically necessary, the light duty assignment may continue for at least one year.

(b) After recovery from a temporary disability, a firefighter, police officer, or emergency medical services personnel shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another firefighter, police officer, or emergency medical services personnel may voluntarily do the work of the injured firefighter, police officer, or emergency medical services personnel until the person returns to duty.

SECTION 2. Section 504.051(a), Labor Code, is amended to read as follows:

(a) Benefits provided under this chapter shall be offset:

(1) to the extent applicable, by any amount for incapacity received as provided by:

(A) Chapter 143 or 177A, Local Government Code;

or

(B) any other statute in effect on June 19, 1975, that provides for the payment for incapacity to work because of injury on the job that is also covered by this chapter; and

(2) by any amount paid under Article III, Section 52e, of the Texas Constitution, as added in 1967.

SECTION 3. Section 177A.002, Local Government Code, as

added by this Act, applies only to a collective bargaining, meet and confer, or other similar agreement entered into on or after the effective date of this Act.

SECTION 4. Section 504.051(a), Labor Code, as amended by this Act, applies only to a claim for workers' compensation benefits filed on or after the effective date of this Act. A claim filed before that date is governed by the law as it existed on the date the claim was filed, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 471 was passed by the House on April 5, 2023, by the following vote: Yeas 146, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 471 on May 24, 2023, by the following vote: Yeas 138, Nays 4, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 471 was passed by the Senate, with amendments, on May 19, 2023, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor