

Adopted: 1/21/93  
Amended: 9/27/07  
Amended: 1/29/10

## **Amendment to Parameters and Guidelines**

Labor Code Section 3212.1

Statutes 1989, Chapter 1171

Statutes 2006, Chapter 78, Section 8 (AB 1805)

### *Cancer Presumption-Peace Officers*

05-PGA-37 (CSM-4416, 06-RL-4081/4416-01)

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement and ends on June 30, 2008

#### **I. SUMMARY OF MANDATE**

Statutes 1989, chapter 1171, amended Section 3212.1 of the Labor Code to add "peace officers as defined in Section 830.1 and subdivision (a) of Section 830.2 of the Penal Code who are primarily engaged in active law enforcement activities" to the category of public employees that are covered by its provisions. Previously, the provisions only applied to public sector fire fighting personnel. This section states that cancer that has developed or manifested itself in peace officers will be presumed to have arisen out of and in the course of employment, unless the presumption is controverted by other evidence. The presumption is extended to a peace officer following termination of service for a period of three calendar months for each year of requisite service, but not to exceed sixty (60) months in any circumstance, commencing with the last date actually worked in the specified capacity.

#### **II. COMMISSION ON STATE MANDATES' DECISION**

On July 23, 1992, the Commission on State Mandates determined that local law enforcement agencies will incur "cost mandated by the state" as a result of Statutes 1989, chapter 1171.

#### **III. ELIGIBLE CLAIMANTS**

Any law enforcement department or office of a city, county, a city and county, a special district or school district of the state which employs peace officers as defined in Sections 830.1 and 830.2 of the Penal Code and incurs increased cost as a result of this statute.

#### **IV. PERIOD OF CLAIM**

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement and ends on June 30, 2008, because reimbursement for this program ended on June 30, 2008.

Chapter 1171/89 became effective on September 30, 1989. Section 17557 of the Government Code provides that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for Chapter 1171/89 was initially filed on December 30, 1991, therefore the reimbursable costs to the local agencies are all

such permitted costs incurred on or after July 1, 1990. Beginning July 1, 2008, reimbursement is not required for this program.

## **V. FORMULA FOR DETERMINATION OF CASES SUBJECT TO REIMBURSEMENT**

Reimbursement requires a demonstration of elements as follows:

- A. A claim under Statutes 1989, chapter 1171 is reimbursable if:
1. The worker is a peace officer within the meaning of Penal Code Section 830.1 and subdivision (a) of Section 830.2 of the Penal Code who are primarily engaged in active law enforcement activities;
  2. The worker has cancer which has caused the disability;
  3. The worker's cancer developed or manifested itself during a period while the worker was in the service of the employer, or within the extended period provided or in Labor Code Section 3212.1;
  4. The worker was exposed, while in the service of the employer, to one or more known carcinogens as defined by the International Agency for Research on Cancer or the Director of the Department of Industrial Relations; and
  5. The one or more carcinogens to which the worker was exposed are reasonably linked to the disabling cancer, as demonstrated by competent medical evidence.

## **VI. REIMBURSABLE COSTS**

A case meeting all the above five conditions is eligible for reimbursement at fifty percent (50%) of the reimbursable costs defined below.

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

A. Insured Local Agencies

If an insured local entity (insured through State Compensation Insurance Fund) incurred any increased costs as a result of Chapter 1171/89, they would be entitled to seek reimbursement for such costs which are specifically attributable to Labor Code Section 3212.1.

If the local entity can show that its experience modification premium was increased or its dividends were decreased, 50% of those respective increases or decreases will be reimbursed.

B. Local Agencies Covered by a Joint Powers Agreement or Other Carrier

Local agencies covered by a joint powers agreement or other insurance carrier for workers' compensation may claim in the same manner as above for insured local agencies provided;

- (1) Insurance premiums or contributions are based on the Workers' Compensation Insurance Rating Bureau rates and the current loss experience modification factor, and
- (2) The insurer is responsible for claims of terminated or withdrawn local agencies if such claims arose while insured by the insurer.

C. Self-Insured Local Agencies

All actual costs of a claim based upon the presumption set forth in Labor Code Section 3212.1 are reimbursable, including but not limited to the following:

(1) Administrative Costs

(a) Staff Costs

- Salaries and employee benefits
- Costs of supplies
- Legal counsel costs
- Clerical support
- Normal local rates of reimbursement for necessary and reasonable travel and related expenses for staff
- Amounts paid to adjusting agencies

(b) Overhead Costs

Counties, cities and special district may claim indirect cost through an indirect cost rate proposal prepared in accordance with the provision of the Office of Management and Budget Circular No. A-87, "Cost Principles for Grants to State and Local Governments" as a percentage of direct salaries and wages. Indirect costs may include costs of space, equipment, utilities, insurance, administration, etc. (i.e., those elements of indirect costs incurred as the result of the mandate originating in the performing unit and the costs of central government services distributed through the central services cost services cost allocation plan and not otherwise treated as direct costs). Computation of the indirect cost rate must accompany the claim showing how the rate was derived.

(2) Benefit Costs

Actual benefit costs under this presumption shall be reimbursable and shall include, but are not limited to:

- Permanent disability benefits
- Death benefits
- Temporary disability benefits or full salary in lieu of temporary disability benefits as required by Labor Code Section 4850, or other local charter provision or ordinance in existence on January 1, 1990. Provided, however, that salary in lieu of temporary disability benefits were payable under local charter provision or ordinance shall be reimbursable only to the extent that those benefits do not exceed the benefits required by Labor Code Section 4850.

**VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT**

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the cost claimed. Such offsetting savings shall include, but not be limited to, savings in the cost of personnel, service or supplies, or increased revenues obtained by the claimant. In addition, reimbursements received from any source (e.g., federal, state, etc.) for this mandate shall be identified and deducted from the claim.

**VIII. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

**IX. REQUIRED CERTIFICATION**

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

That Section 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims with the State of California.

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<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.