

2017 -- H 5601

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LC001214
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO TOWNS AND CITIES - OPTIONAL RETIREMENT FOR MEMBERS OF
POLICE AND FIREFIGHTERS

Introduced By: Representatives Almeida, Hull, Lombardi, Jacquard, and Johnston

Date Introduced: March 01, 2017

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-21.2-9 of the General Laws in Chapter 45-21.2 entitled
2 "Optional Retirement for Members of Police Force and Fire Fighters" is hereby amended to read
3 as follows:

4 **45-21.2-9. Retirement for accidental disability.**

5 (a) Any member in active service, regardless of length of service, is entitled to an
6 accidental disability retirement allowance. Application for the allowance is made by the member
7 or on the member's behalf, stating that the member is physically or mentally incapacitated for
8 further service as the result of an injury or illness sustained while in the performance of duty and
9 certifying to the time, place, and conditions of the duty performed by the member which resulted
10 in the alleged disability and that the alleged disability was not the result of the willful negligence
11 or misconduct on the part of the member, and was not the result of age or length of service, and
12 that the member has not attained the age of sixty-five (65). The application shall be made within
13 ~~eighteen (18)~~ thirty-six (36) months of the alleged accident from which the injury has resulted in
14 the member's present disability and shall be accompanied by an accident report and a physician's
15 report certifying to the disability. If the member was able to return to his or her employment and
16 subsequently reinjures or aggravates the same injury or illness, the member shall make another
17 application within ~~eighteen (18)~~ thirty-six (36) months of the reinjury or aggravation which shall
18 be accompanied by a physician's report certifying to the reinjury or aggravation causing the

1 disability. If a medical examination made by three (3) physicians engaged by the retirement
2 board, and other investigations as the board may make, confirms the statements made by the
3 member, the board may grant the member an accidental disability retirement allowance.

4 (b) For the purposes of subsection (a), "aggravation" shall mean an intervening work-
5 related trauma that independently contributes to a member's original injury [or illness](#) that amounts
6 to more than the natural progression of the preexisting disease or condition and is not the result of
7 age or length of service. The intervening independent trauma causing the aggravation must be an
8 identifiable event or series of work-related events that are the proximate cause of the member's
9 present condition of disability.

10 (c) "Occupational cancer", as used in this section, means a cancer arising out of
11 employment as a fire fighter, due to injury [or illness](#) due to exposures to smoke, fumes, or
12 carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty in
13 the fire department.

14 (d) For purposes of subsection (a), "reinjury" shall mean a recurrence of the original
15 work-related injury [or illness](#) from a specific ascertainable event. The specific event must be the
16 proximate cause of the member's present condition of disability.

17 (e) Any fire fighter, including one employed by the state, or a municipal firefighter
18 employed by a municipality that participates in the optional retirement for police officers and fire
19 fighters as provided in this chapter, who is unable to perform his or her duties in the fire
20 department by reason of a disabling occupational cancer which develops or manifests itself
21 during a period while the fire fighter is in the service of the department, and any retired member
22 of the fire force of any city or town who develops occupational cancer, is entitled to receive an
23 occupational cancer disability and he or she is entitled to all of the benefits provided for in this
24 chapter, chapters 19, 19.1, and 21 of this title and chapter 10 of title 36 if the fire fighter is
25 employed by the state.

26 (f) In the event that any party is aggrieved by the determination of the retirement board
27 pursuant to § 45-19-1, for an injury [or illness](#) occurring on or after July 1, 2011, the party may
28 submit an appeal to the Rhode Island workers' compensation court. The appellant shall file a
29 notice of appeal with the retirement board and with the workers' compensation court within
30 twenty (20) days of the entry of the retirement board's decision and shall serve a copy of the
31 notice of appeal upon the opposing party.

32 (g) Within twenty (20) days of the receipt of the notice of appeal, the retirement board
33 shall transmit the entire record of proceedings before it, together with its order, to the workers'
34 compensation court.

1 (h) In the event that a party files a notice of appeal to the workers' compensation court,
2 the order of the retirement board shall be stayed pending further action by the court pursuant to
3 the provisions of Rhode Island general law § 28-35-20.

4 (i) Upon receipt of the notice of appeal, the court shall assign the matter to a judge and
5 shall issue a notice at the time advising the parties of the judge to whom the case has been
6 assigned and the date for pretrial conference in accordance with Rhode Island general law § 28-
7 35-20.

8 (j) All proceedings filed with the workers' compensation court pursuant to this section
9 shall be de novo and shall be subject to the provisions of chapters 29 to 38 of Title 28 for all case
10 management procedures and dispute resolution processes, as provided under the rules of workers'
11 compensation court. The workers' compensation court shall enter a pretrial order in accordance
12 with subsection 28-35-20(c) which grants or denies, in whole or in part, the relief sought by the
13 petitioner. The pretrial order shall be effective upon entry and any payments ordered by it shall be
14 paid within fourteen (14) days of the entry of the order. Provided, however, that in the event that
15 the retirement board files a claim for trial of the pretrial order entered by the court, the order of
16 the court shall be stayed until a final order or decree is entered by the court. If after trial and the
17 entry of a final decree, the court sustains the findings and orders entered in the pretrial order, the
18 retirement board shall reimburse the municipality all benefits paid by it from the time the pretrial
19 order was entered until the time the final decree is entered by the court. Where the matter has
20 been heard and decided by the workers' compensation court, the court shall retain jurisdiction to
21 review any prior orders or decrees entered by it. Such petitions to review shall be filed directly
22 with the workers' compensation court and shall be subject to the case management and dispute
23 resolution procedures set forth in chapters 29 through 38 of title 28 ("Labor and Labor
24 Relations").

25 (k) If the court determines that a member qualifies for accidental disability retirement, the
26 member shall receive a retirement allowance equal to sixty-six and two-thirds percent (66 2/3%)
27 of the rate of the member's compensation at the date of the member's retirement, subject to the
28 provisions of § 45-21-31.

29 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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- 1 This act would add illness sustained while in the performance of duty to the definition of
- 2 accidental disability.
- 3 This act would take effect upon passage.

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