

MEMORANDUM

To: Senate Financial Institutions and Insurance

From: Alan D. Conroy, Executive Director

Date: February 6, 2019

Subject: SB 15; Changing the definition of “service-connected” for the Kansas Policemen and Firemen’s (KP&F) retirement system

SB 15 would add to the definition of “service-connected” as it pertains to a death or any physical or mental disability of a KP&F members by adding “bloodborne pathogen” (i.e. hepatitis, HIV/AIDS) and specifying cancers of the brain, skin, digestive system, hematological system and genitourinary system and creating the basis for establishing if the contraction of the bloodborne pathogen or the specified cancers is service-connected.

The new definition would apply to all KP&F members, including Emergency Medical Services personnel who are members under K.S.A. 74-4954a.

Proposed Changes to Current Law

Current statutory language includes cancer as service-connected if the cancer that caused the death or disability is a type of cancer that “may, in general, result from exposure to heat, radiation, or a known carcinogen.”

The changes in SB 15 would specify the list of cancers considered service-connected as cancers of the brain, skin, digestive system, hematological system or genitourinary system. The bill also specifies that at the time of becoming a policeman or firemen, a physical examination must have been completed that failed to reveal substantial evidence of such cancer that preexisted employment.

SB 15 also lays out the requirements for bloodborne pathogens to be considered service connected, which include:

1. The member must report the exposure within 2 days when the member knew or reasonably should have known of exposure.
2. The employer provides a baseline test within 5 days of the member reporting exposure. The test must establish that the employee was not infected with a bloodborne pathogen at the time of the reported exposure.
3. The member must comply with all “reasonable and necessary” medical procedures.
4. The member is determined to have a bloodborne pathogen within 24 months after the reported exposure.

Policy Considerations

The term “bloodborne pathogen” is not defined in the bill or elsewhere in Kansas statute. The federal Occupational Safety and Health Administration (OSHA) defines bloodborne pathogen as “pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).” The Committee may wish to consider adding a definition of bloodborne pathogen to SB 15.

The language being stricken on page 4 of the bill, which was added to statute in 1993, is used to protect the System from potential abuse in extreme situations. For instance, a department hiring a police officer or firefighter with a hereditary cancer that is not related to a KP&F position and therefore not eligible for the cancer to be considered “service-connected.” Removing the language would probably affect only a small number of members, but there would be some, likely minimal, cost impact due to removing the language.

The language in SB 15 closely mirrors a worker’s compensation statute in Colorado. Generally, worker’s compensation statutes are much more specific than is required for KP&F death and disability. The language as written will not cause any issues for the administration of KP&F death and disability benefits. However, it is possible to include bloodborne pathogens to the “service-connected” definition without including the additional testing and reporting requirements in SB 15. KPERS could suggest language to accomplish this if the Committee is interested in this approach.

For most KP&F members there is no difference between service connected and non-service connected benefits. For any disability, these members receive 50% of their final average salary each year until the member is eligible for retirement. Their final average salary may be recalculated to the benefit of the member if they have been disabled for a long period of time.

For about 2% of members who joined KP&F before July 1, 1989 there is a difference between service connected and non-service connected disability. These members receive the higher of 50% of their final average salary or their final average salary X 2.5% X years of service for service connected death. For non-service connected death the disability benefit is final average salary X 2.5% X years of service with a minimum of 25% and a maximum of 90% of final average salary.

Potential Cost Impact

KP&F death and disability benefits are a part of the pension plan design. Any changes to the number of KP&F members who become eligible for service connected death or disability benefits could impact the overall cost of benefits.

A quick review of our records indicates we received 122 KP&F disability applications and approved 112 during the five-year period including calendar years 2013-2017. Only 1 claim was denied. For the 9 remaining claims, 3 members voluntarily returned to work before the application process was completed and 6 did not complete the process for various reasons (i.e. opted to retire rather than apply for disability).

Any change in the cost of benefits would be reflected in the actuarial required contributions. Since KP&F employers are required by statute to pay the full actuarial required contribution rate, SB 15 could affect future employer contributions. However, SB 15 is narrowly focused and would be estimated to affect a small number of KP&F members. Therefore, SB 15 is expected to have no meaningful actuarial impact.

As introduced, it appears that all of the testing requirements in SB 15 are the responsibility of the individual employers so SB 15 does not create any new administrative processes for KPERS. There would be updates required for some KPERS documents, like the KPERS Membership Guide. However, the cost is expected to be minimal and can be accomplished within existing resources.

I would be pleased to respond to any questions the Committee may have.