

**COMMISSION ON STATE MANDATES**

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July 27, 2004

Mr. Keith Petersen  
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*And Affected State Agencies and Interested Parties (see enclosed mailing list)*

Re: **Item 9, Final Staff Analysis-Errata for Pages 1 and 2 of the Executive Summary**

*Cancer Presumption (K-l 4); 02-TC- 15*  
Santa Monica Community College District, Claimant  
Statutes 1982, Chapter 1568 (AB 3011);  
Statutes 1984, Chapter 114 (AB 1399);  
Statutes 1988, Chapter 1038 (SB 1145);  
Statutes 1989, Chapter 1171 (SB 89);  
Statutes 1999, Chapter 595 (AB 539);  
Statutes 2000, Chapter 887 (SB 1820)  
Labor Code Section 3212.1

Dear Mr. Petersen:

Enclosed is an errata sheet for the executive summary of the final staff analysis for this test claim. As originally printed, the first line on page 2 was omitted by the printer. The errata sheet now correctly includes the first line on page 2, which reads as follows:

“state-mandated requirements on local agencies. Rather, the decision to dispute this type of,”

Please contact Camille Shelton, Senior Commission Counsel, if you have any questions regarding the above.

Sincerely,

  
PAULA HIGASHI  
Executive Director

Enc.

MAILED: Mail List FAXED: \_\_\_\_\_  
DATE: 7/27/09 INITIAL: L J  
CHRON: X FILE: \_\_\_\_\_  
WORKING BINDER: \_\_\_\_\_

**ITEM 9 - ERRATA  
TEST CLAIM  
FINAL STAFF ANALYSIS**

Labor Code Section 32 12.1

Statutes 1982, Chapter 1568  
Statutes 1984, Chapter 114  
Statutes 1988, Chapter 1038  
Statutes 1989, Chapter 1171  
Statutes 1999, Chapter 595 (AB 539)  
Statutes 2000, Chapter 887 (SB 1820)

*Cancer Presump tion (K- 14)*  
(02-TC- 15)

Santa Monica Community College District, Claimant

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**EXECUTIVE SUMMARY**

**Background**

This case addresses an evidentiary presumption in workers compensation cases given to certain firefighters and peace officers that develop cancer during employment.

Generally, before an employer is liable for payment of workers compensation benefits, the employee must show that the injury arose out of and in the course of employment, and that the injury was proximately caused by the employment. The burden of proof is normally on the employee to show proximate cause by a preponderance of the evidence.

The Legislature eased the burden of proving industrial causation for certain public employees that provide vital and hazardous services by establishing a series of evidentiary presumptions. In 1982, the Legislature enacted Labor Code section 32 12.1, which provided a limited presumption, easing the burden of proving industrial causation for specified firefighters that developed cancer during the period of employment. In 1989, certain peace officers were also given the cancer presumption, In these cases, there was a presumption that the cancer arose out of and iii the course of employment, and the employer was liable for full hospital, surgical, and medical treatment, disability indemnity, and death benefits, if the firefighter or peace officer could show that he or she was exposed, while in the service of the department or unit, to a known carcinogen and that the carcinogen was reasonably linked to the cancer.

On May 27, 2004, the Commission adopted a statement of decision denying a similar test claim on Labor Code section 3212.1, as amended by Statutes 1999, chapter 595, Statutes 2000, chapter 887 (*Cancer Presumption for Law Enforcement and Firefighters*, CSM 0 1 -TC- 19 .) The Commission found that the express language of Labor Code section 3212.1 does not impose any

state-mandated requirements on local agencies. Rather, the decision to dispute this type of workers compensation claim and prove that the injury is non-industrial remains entirely with the local agency, as it has since Labor Code section 3212.1 was enacted in 1982.’

In the present case, the claimant, a community college district, contends that the test claim statute imposes a reimbursable state-mandated program by, in part, requiring school districts and community college districts to pay additional costs of claims caused by the shifting of the burden of proof of the cause of the cancer from the police officer employee to the district.

### **Conclusion**

As described in the analysis, staff concludes that school districts and community college districts are not eligible claimants for this test claim because the test claim statute, Labor Code section 3212.1, does not provide a rebuttable cancer presumption to employees of a school district or community college district,

Assuming for the sake of argument only that Labor Code section 3212.1 applied to peace officers or firefighters employed by school districts and community college districts, staff further concludes that Labor Code section 3212.1 is not subject to article XIII B, section 6 of the California Constitution because it does not impose a mandate on school districts and community college districts.

### **Staff Recommendation**

Staff recommends that the Commission adopt the staff analysis and deny this test claim.

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<sup>1</sup> Exhibit F.

# Commission on State Mandates

Original List Date: 3/12/2003 Mailing Information: Other  
Last Updated: 7/23/2004  
List Print Date: 07/27/2004  
Claim Number: 02-TC-15  
Issue: Cancer Presumption (K-I 4)

## Mailing List

### Related

00-TC- 19 Mandatory On-The-Job Training for Peace Officers Working Alone

### TO ALL PARTIES AND INTERESTED PARTIES:

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