AMENDED IN ASSEMBLY MARCH 11, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL No. 991

Introduced by Assembly Member Ward

February 18, 2021

An act to amend ~~Section 200~~ *Sections 3212, 3212.1, 3212.15, 3212.6, 3212.8, 3212.85, 3212.9, and 3212.11* of the Labor Code, relating to ~~employment.~~ *workers' compensation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 991, as amended, Ward. ~~Wages.~~ *Workers' compensation: presumed injuries.*

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Existing law creates a rebuttable presumption that specified injuries, such as meningitis, tuberculosis, or hernia, sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of employment. Existing law creates a rebuttable presumption that skin cancer that develops or manifests in the course of employment of a lifeguard, as specified, arose out of and in the course of employment. Existing law authorizes a lifeguard to file a claim for skin cancer after employment has terminated for a specified period based on years of employment, not to exceed 60 months.

This bill would expand presumptions for hernia, pneumonia, heart trouble, cancer, tuberculosis, bloodborne infectious disease, methicillin-resistant Staphylococcus aureus skin infection, and meningitis-related illnesses and injuries to a lifeguard employed on a

year-round, full-time basis by the City of San Diego. The bill would increase the period of time after termination of employment that a lifeguard employed on a year-round, full-time basis by the City of San Diego can file a claim for skin cancer. The bill would expand the presumptions for illness or injury related to post-traumatic stress disorder or exposure to biochemical substances, as defined, to a lifeguard employed by the City of San Diego Fire-Rescue Department.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of San Diego.

~~Existing law defines the terms "wages" and "labor" for purposes of provisions regarding the payment of wages to employees in various occupations.~~

~~This bill would make nonsubstantive changes to those definitions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3212 of the Labor Code is amended to read:

3212. In the case of members of a sheriff's office or the California Highway Patrol, district attorney's staff of inspectors and investigators or of police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, whether those members are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographers, telephone operators, and other officeworkers, *and in the case of lifeguards employed year-round on a regular, full-time basis by the City of San Diego*, the term "injury" as used in this act includes hernia when any part of the hernia develops or manifests itself during a period while the member is in the service in the office, staff,

division, department, or unit, and in the case of members of fire departments, except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers, and in the case of county forestry or firefighting departments, except those whose principal duties are clerical, such as stenographers, telephone operators, and other officeworkers, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographers, telephone operators, and other officeworkers, *and in the case of lifeguards employed year-round on a regular, full-time basis by the City of San Diego,* the term "injury" includes pneumonia and heart trouble that develops or manifests itself during a period while the member is in the service of the office, staff, department, or unit. In the case of regular salaried county or city and county peace officers, the term "injury" also includes any hernia that manifests itself or develops during a period while the officer is in the service. The compensation that is awarded for the hernia, heart trouble, or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

The hernia, heart trouble, or pneumonia so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. The presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

The hernia, heart trouble, or pneumonia so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

SEC. 2. Section 3212.1 of the Labor Code is amended to read:

3212.1. (a) This section applies to all of the following:

(1) Active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(2) Active firefighting members of a fire department that serves a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters.

(3) Active firefighting members of a fire department that serves a National Aeronautics and Space Administration installation and who adhere to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(4) Peace officers, as defined in Section 830.1, subdivision (a) of Section 830.2, and subdivisions (a) and (b) of Section 830.37, of the Penal Code, who are primarily engaged in active law enforcement activities.

(5) (A) Fire and rescue services coordinators who work for the Office of Emergency Services.

(B) For purposes of this paragraph, "fire and rescue services coordinators" means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(6) Lifeguards employed year-round on a regular, full-time basis by the City of San Diego.

(b) The term "injury," as used in this division, includes cancer, including leukemia, that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director.

(c) The compensation that is awarded for cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by evidence that the primary site of the cancer has been established and that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer. Unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 120 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(e) The amendments to this section enacted during the 1999 portion of the 1999–2000 Regular Session shall be applied to claims for benefits filed or pending on or after January 1, 1997, including, but not limited to, claims for benefits filed on or after that date that have previously been denied, or that are being appealed following denial.

(f) This section shall be known, and may be cited, as the William Dallas Jones Cancer Presumption Act of 2010.

SEC. 3. Section 3212.15 of the Labor Code is amended to read:

3212.15. (a) This section applies to all of the following:

(1) Active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(2) Active firefighting members of a fire department that serves a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters.

(3) Active firefighting members of a fire department that serves a National Aeronautics and Space Administration installation and who adhere to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(4) Peace officers, as defined in Section 830.1, subdivisions (a), (b), and (c) of Section 830.2, Section 830.32, subdivisions (a) and (b) of Section 830.37, and Sections 830.5 and 830.55 of the Penal Code, who are primarily engaged in active law enforcement activities.

(5) (A) Fire and rescue services coordinators who work for the Office of Emergency Services.

(B) For purposes of this paragraph, "fire and rescue services coordinators" means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(6) Lifeguards employed year-round on a regular, full-time basis by the City of San Diego Fire-Rescue Department.

(b) In the case of a person described in subdivision (a), the term "injury," as used in this division, includes "post-traumatic stress disorder," as diagnosed according to the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and that develops or manifests itself during a period in which any member described in subdivision (a) is in the service of the department or unit.

(c) For an injury that is diagnosed as specified in subdivision (b):

(1) The compensation that is awarded shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(2) The injury so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) Compensation shall not be paid pursuant to this section for a claim of injury unless the member has performed services for the department or unit for at least six months. The six months of employment need not be continuous. This subdivision does not

apply if the injury is caused by a sudden and extraordinary employment condition.

(e) This section applies to injuries occurring on or after January 1, 2020.

(f) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 4. Section 3212.6 of the Labor Code is amended to read:

3212.6. In the case of a member of a police department of a city or county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, or a prison or jail guard or correctional officer who is employed by a public agency, when that person is employed upon a regular, full-time salary, or in the case of members of fire departments of any city, county, or district, or other public or municipal corporations or political subdivisions, when those members are employed on a regular fully paid basis, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting and first-aid response services, or of any county forestry or firefighting department or unit, where those members are employed on a regular fully paid basis, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response service such as stenographers, telephone operators, and other officeworkers, *and in the case of lifeguards employed year-round on a regular, full-time basis by the City of San Diego,* the term "injury" includes tuberculosis that develops or manifests itself during a period while that member is in the service of that department or office. The compensation that is awarded for the tuberculosis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three

calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

A public entity may require applicants for employment in firefighting positions who would be entitled to the benefits granted by this section to be tested for infection for tuberculosis.

SEC. 5. Section 3212.8 of the Labor Code is amended to read:

3212.8. (a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or active firefighting services, such as stenographers, telephone operators, and other office workers, *and in the case of lifeguards employed year-round on a regular, full-time basis by the City of San Diego,* the term "injury" as used in this division, includes a ~~blood-borne~~ *bloodborne* infectious disease or methicillin-resistant Staphylococcus aureus skin infection when any part of the ~~blood-borne~~ *bloodborne* infectious disease or methicillin-resistant Staphylococcus aureus skin infection develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit. The compensation that is awarded for a ~~blood-borne~~ *bloodborne* infectious disease or methicillin-resistant Staphylococcus aureus skin infection shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

(b) (1) The ~~blood-borne~~ *bloodborne* infectious disease or methicillin-resistant Staphylococcus aureus skin infection so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it.

(2) The ~~blood-borne~~ *bloodborne* infectious disease presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(3) Notwithstanding paragraph (2), the methicillin-resistant Staphylococcus aureus skin infection presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of 90 days, commencing with the last day actually worked in the specified capacity.

(c) The ~~blood-borne~~ *bloodborne* infectious disease or methicillin-resistant Staphylococcus aureus skin infection so developing or manifesting itself in those cases shall in no case be attributed to any disease or skin infection existing prior to that development or manifestation.

(d) For the purposes of this section, ~~"blood-borne~~ "*bloodborne* infectious disease" means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as ~~blood-borne~~ *bloodborne* pathogens by the Department of Industrial Relations.

SEC. 6. Section 3212.85 of the Labor Code is amended to read:

3212.85. (a) This section applies to peace officers described in Sections 830.1 to 830.5, inclusive, of the Penal Code, and members of a fire department.

(b) The term "injury," as used in this division, includes illness or resulting death due to exposure to a biochemical substance that develops or occurs during a period in which any member described in subdivision (a) is in the service of the department or unit.

(c) The compensation that is awarded for injury pursuant to this section shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) The injury that develops or manifests itself in these cases shall be presumed to arise out of, and in the course of, the employment. This presumption is disputable and may be controverted by other evidence. Unless controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination

of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(e) For purposes of this section, the following definitions apply:

(1) "Biochemical substance" means any biological or chemical agent that may be used as a weapon of mass destruction, including, but not limited to, any chemical warfare agent, weaponized biological agent, or nuclear or radiological agent, as these terms are defined in Section 11417 of the Penal Code.

(2) "Members of a fire department" includes, but is not limited to, an apprentice, volunteer, partly paid, or fully paid member of any of the following:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(E) A lifeguard employed year-round on a regular, full-time basis by the City of San Diego Fire-Rescue Department.

SEC. 7. Section 3212.9 of the Labor Code is amended to read:

3212.9. In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or a county probation officer, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, when that person is employed on a regular, full-time salary, or in the case of a member of a fire department of any city, county, or district, or other public or municipal corporation or political subdivision, or any county forestry or firefighting department or unit, when those members are employed on a regular full-time salary, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement or firefighting, such as stenographers, telephone operators, and other officeworkers, *and in the case of a lifeguard employed year-round on a regular, full-time basis by the City of San Diego,* the term "injury" includes meningitis that develops or manifests itself during a period while that person is in the service of that department, office, or unit. The

compensation that is awarded for the meningitis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

SEC. 8. Section 3212.11 of the Labor Code is amended to read:

3212.11. This section applies to both of the following: (a) active lifeguards employed by a city, county, city and county, district, or other public or municipal corporation or political subdivision, *except lifeguards employed year-round on a regular, full-time basis by the City of San Diego,* and (b) active state lifeguards employed by the Department of Parks and Recreation. The term "injury," as used in this division, includes skin cancer that develops or manifests itself during the period of the lifeguard's employment. The compensation awarded for that injury shall include full hospital, surgical, and medical treatment, disability indemnity, and death benefits, as provided by the provisions of this division.

Skin cancer so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board shall find in accordance with it. This presumption shall be extended to a lifeguard following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Skin cancer so developing or manifesting itself in these cases shall not be attributed to any disease existing prior to that development or manifestation.

This section shall only apply to lifeguards employed for more than three consecutive months in a calendar year.

SEC. 9. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable

within the meaning of Section 16 of Article IV of the California Constitution because the work of lifeguards employed year-round on a regular, full-time basis by the City of San Diego requires the workers' compensation presumptions provided for in the Labor Code and afforded to similarly situated public safety employees.

~~SECTION 1. Section 200 of the Labor Code is amended to read:~~

~~200. For purposes of this article:~~

~~(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.~~

~~(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.~~

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