

Commonly asked questions about **firefighter** **work comp codes**



Firefighters and work comp claims

Q: Are volunteer firefighters covered under the workers' compensation policy for the fire district?

A: Under Arizona's Workers' Compensation Act, regular members of volunteer fire departments are deemed to be employees and are therefore entitled to workers' compensation benefits. The agency must maintain a roster of these qualified workers and provide a copy of it to the workers' compensation insurance carrier. SCF Arizona's claims adjusters are required to verify that any individual working for a fire district who files a claim is listed on that district's current roster.

Q: How is claim compensability determined?

A: Compensability is determined on the facts surrounding each individual claim and Arizona statutes. To be found compensable in Arizona the claim must arise out of the employment and occur in the course of the employment. "Arising out of" refers to the injury being causally connected to the employment and requires a medical expert to be able to document that the injury or medical condition was caused in whole or in part by the employment. "In the course of" refers to the time, place and circumstances under which the injury occurred, and generally requires that the injury occurred while the employee was at work or performing job related activities.

Q: How is the Average Monthly Wage (AMW) for payment of indemnity compensation established?

A: By statute the AMW is based on gross earnings of the employee prior to the date of injury up to a maximum allowable monthly wage (revised annually by the Industrial Commission of Arizona). These wages may include wages earned from other employment at the time of injury. In the case of volunteer firefighters, the wage is based on the beginning salary of the same rank or grade of an individual in full-time service in the department. If there is no full-time equivalent, then the governing body for the city, town, volunteer fire district or corporation must set the wage level by resolution.

Q: How do I know whether an injured worker needs to file a new claim or file a Petition to Reopen a prior claim?

A: Arizona statutes allow for an injured worker to file a Petition to Reopen a closed claim for a new, additional or previously undiscovered condition causally related to a previous industrial injury. If the condition is causally related to a new incident arising out of the claimant's employment, then a new claim should be filed. However, if a new incident aggravates a previous industrial condition, the worker has the option to either file a new claim or a petition to reopen.



Just like the compensability decision on a new claim, the compensability decisions regarding Petitions to Reopen are determined by the facts and law but are primarily dependent on the employee obtaining a medical report from a physician that adequately describes the condition, need for treatment, and the relationship of the condition to the original industrial injury.

Q: Are Arizona Fire Districts formed under Title 48, Arizona Revised Statutes, eligible for the workers' compensation drug and alcohol testing premium discount?

A: Arizona Revised Statute §23-961(K) provides that a workers' compensation insurance carrier may offer a 5% premium discount to an employer if the employer conducts drug testing of its employees. However, the provisions of the statutes effectively eliminate the ability of a governmental entity, and specifically fire districts, to take advantage of the 5% premium discount. This is because governmental employees may not be required to undergo pre-employment drug testing.

Fire districts formed in accordance with the provisions of Title 48, chapter 5 article 1 of the Arizona Revised Statutes are considered as political subdivisions of the state and are therefore subject to constitutional constraints against unreasonable search and seizure.

Pre-employment drug testing by a governmental entity constitutes a search under the Fourth Amendment of the United States Constitution. A search ordinarily must be based on individualized suspicion of wrongdoing. A "special need" justifying a mandatory drug test without an individualized suspicion of wrongdoing must be shown, and this justification for drug testing is allowed only when the individual subject to the test performs highly regulated functions concerning the public safety or special government roles, also referred to as "safety sensitive" positions.

In the case of firefighters, the Arizona Supreme Court has held the City of Mesa could not justify random, suspicionless drug testing of firefighters under the "special needs" exception. Similarly, the 9th Circuit Court of Appeals held a municipality could not justify pre-employment drug testing of a library page under the "special needs" exception.

Given Arizona and federal case law, it is clear a fire district cannot constitutionally require all employees to undergo pre-employment drug testing. Even if it is assumed firefighters may be subjected to such a requirement based on the argument they occupy "safety-sensitive" positions, other positions, such as clerical/office positions or other administrative positions, would not fall within the definition of "safety-sensitive" jobs and could not be required to submit to drug testing.

This conclusion is consistent with a bulletin issued by the National Council on Compensation Insurance (NCCI) on June 24, 2010, that stated: "government employers that do not perform drug testing on all employees are **not eligible** for the premium credit."

If you have further questions regarding workplace injury claims, email Tracy Charnetsky, tcharnetsky@scfaz.com or call 602.631.2004.