



H.B. 471 FAQ: First Responder Illness or Injury Leave of Absence at Full Pay

Scott Houston
Intergovernmental Relations Manager
Texas Municipal League Intergovernmental Risk Pool
scott.houston@tmlirp.org

1. What is House Bill 471?

[H.B. 471](#) enacted a state law that requires a city (and any other political subdivision – the term “city” throughout this FAQ includes those) to provide a firefighter, police officer, or emergency medical services employee a leave of absence for an illness or injury related to their line of duty. The leave is with “full pay” for a period “commensurate with the nature of the line of duty illness or injury,” up to at least one year. TEX. LOC. GOV’T CODE §177A.003.

The H.B. 471 House [bill analysis](#) provides that:

Inadequacies in the state’s workers’ compensation system have resulted in certain first responders being terminated from their employment due to a work-related injury and in a lack of coverage for diseases and medical issues that arise as a result of employment. C.S.H.B. 471 seeks to address these inadequacies by establishing illness and injury leave protections for certain county and municipal responders....

The alleged inadequacies in the workers’ compensation system aren’t made clear, but the bill language indicates that the legislature believes that the temporary income benefits provided to all city employees under Texas workers’ compensation law may not be sufficient for first responders. (That benefit is typically 70 percent of the employee’s pre-illness or injury income, with a cap of \$1,174 weekly, and no taxes are withheld from or paid on the payment. The benefit can continue up to two years, depending on the circumstances. TEX. LABOR CODE §§408.101 - 103.

In any case, even though the benefits afforded under H.B. 471 may be offset by workers’ compensation benefits, the bill is *not* a workers’ compensation bill. TEX. LABOR CODE §504.051(a).

2. Is the first responder leave granted by H.B. 471 a new concept?

No. The approximately 81 Texas cities that have adopted fire and/or police civil service (those with a population of 10,000 or more that have conducted an election) have been subject to a similar law for many years. *See* TEX. LOC. GOV’T CODE §143.073. Also, some meet-and-confer and

collective bargaining agreements have provided for similar leave, and the bill required cities with those agreements to include a benefit at least as generous as that in H.B. 471. *Id.* at §177A.002.

3. Who is entitled to line of duty injury or illness leave under the bill?

The bill applies to the following paid employees of a city: permanent firefighters, emergency medical services personnel, and full-time licensed police officers who regularly serve in a professional law enforcement capacity in the entity's police department (collectively referred to as "first responders"). Fire chiefs and police chiefs also qualify for injury or illness leave, but volunteer firefighters do not. TEX. LOC. GOV'T CODE §177A.001. As mentioned above, the bill also requires any city with a meet-and-confer or collective bargaining agreement to include a benefit at least as generous as that in H.B. 471. *Id.* at §177A.002.

4. How much line of duty injury or illness leave must a city or other political subdivision pay to a first responder?

H.B. 471 provides that a first responder is entitled to a leave of absence with full pay for a period commensurate with the nature of the line of duty illness or injury, and – if necessary – the leave of absence shall continue for at least one year. At the end of the leave of absence, a city may extend the leave at full or reduced pay.

Thus, a first responder is entitled to:

1. a leave of absence for an injury related to the person's line of duty.
2. at full pay.
3. for at least up to one year.

TEX. LOC. GOV'T CODE §177A.003(a). At the end of the one-year leave of absence, the city council may extend the leave of absence at full or reduced pay. *Id.* at §177A.003(b).

5. What happens if a first responder is unable to return to work after the leave of absence?

If a first responder is temporarily disabled by a line of duty injury or illness and the leave of absence and any extension granted by the city council has expired, the first responder may use accumulated sick leave, vacation time, and other accrued benefits before the person is placed on temporary leave. TEX. LOC. GOV'T CODE §177A.003(c).

If the leave of absence and any extension granted by the city council has expired, and the first responder has exhausted all accrued benefits, the first responder who requires additional leave shall be placed on temporary leave. *Id.* at §177A.003(d). (The bill doesn't define how long an employee must be placed on temporary leave.)

6. May a first responder be placed on light duty while recovering from a line of duty injury or illness? What about reinstatement after recovery?

Yes. If able, a first responder may return to light duty while recovering from a temporary disability. If medically necessary, the light duty assignment may continue for at least one year. TEX. LOC. GOV'T CODE §177A.004(a).

A first responder who has recovered from a temporary disability shall be reinstated to the same rank and with the same seniority he or she had before going on temporary leave. Also, another first responder may voluntarily perform the injured first responder's work until the first responder returns to work. *Id.* at §177A.004(b). Under H.B. 471, a city can presumably implement this requirement in any reasonable way. For example, a city wouldn't be required to allow a patrol officer to replace a chief.

7. What does “related to the person’s line of duty” mean?

The bill doesn't define the term. Under workers' compensation law, which isn't binding here, a “compensable injury” or illness must be suffered during the “course and scope of employment.” TEX. LABOR CODE §401.011 (10) (12). Thus, the term “related to” the person's line of duty could be more expansive.

However, during the House Business and Industry hearing on the bill, the author repeatedly stated that his intent is for the bill to apply to “on duty” injuries, to wit:

“I want to be very clear about what we are talking about here with this bill: we are talking about, firefighters, police officers and EMS professionals who are *injured in the line of duty*...when they are sent into danger, they get injured...when they are stricken with *on-duty injuries and illnesses*...”

See March 13, 2023, House Business and Industry Committee hearing at 19:55 (available at <https://house.texas.gov/video-audio/committee-broadcasts/88/>) (Emphasis added.)

Under H.B. 471, a city can presumably define the term in implementing procedures in any reasonable way. For example, the terms could mirror a workers' compensation determination of compensable injury. In other words, a firefighter who is injured while performing authorized exercises during his or her shift at the fire station would typically be entitled to workers' compensation benefits. On the other hand, the same firefighter who is exercising at his or her home while off duty probably isn't.

8. What does “at full pay” mean?

The bill doesn't define the term. Workers' compensation law, which isn't binding here, provides that a person's temporary income benefit amount (called the “average weekly wage” calculation) is the average of the amount of money the employer paid the employee in the 13 weeks before the injury or illness (including, for example, overtime pay). The calculation also includes non-pecuniary benefits like health insurance, a car allowance, and similar benefits. See <https://www.tdi.texas.gov/wc/employee/benefits.html>.

Under H.B. 471, a city can presumably define the term in implementing procedures in any reasonable way. For example, the city could follow the AWW formula used for workers' compensation purposes. In the alternative, a city could define the term locally to include only the first responder's regular salary, without overtime, and could exclude other benefits. City officials should consult with local legal counsel to make the determination, keeping in mind the possible legislative reaction to their decisions.

9. How does line of duty illness or injury leave under H.B. 471 comport with the Workers' Compensation Act?

Again, H.B. 471 is not a workers' compensation bill. However, the benefit required by the bill may be offset by indemnity benefits provided by the city's workers' compensation benefits. In other words, the bill doesn't require a city to pay a first responder's full salary in addition to workers' compensation income benefits. The bill only requires that the city make up the differential or "gap" between workers' compensation benefits and the first responders' "full pay" (as reasonably defined by the city).

Of course, the bill doesn't define "an illness or injury related to their line of duty." It is theoretically possible that an officer could claim, or a city could locally define, the term to include an illness or injury that isn't compensable under workers' compensation law. In that circumstance, city officials should consult with their local legal counsel to decide the city's responsibilities.

With regard to which payments are primary, the Texas Labor Code language amended by H.B. 471 provides that workers' compensation benefits "shall be offset...to the extent applicable, by any amount for incapacity received as provided by...Chapter 143 or 177A, Local Government Code..." TEX. LABOR CODE §504.051(a)(1)(A).

That language appears to state that the illness or injury leave under the bill would be paid first, and then offset by workers' compensation benefits. However, years of case law related to the existing municipal civil service provision ("Chapter 143") and similar county benefits indicates otherwise. The cases conclude, in a nutshell, that workers' compensation benefits are primary, and the key concept is that a first responder shouldn't be "double dipping." *See, e.g., Frasier v. Yanes*, 9 S.W.3d 422, 426 (Tex. App. – Austin 1999, no pet.); *City of San Antonio v. Vakey*, 123 S.W.3d 497 (Tex. App.-San Antonio 2003, no pet.).

10. What is an example of how H.B. 471 could interact with workers' compensation benefits for an illness or injury?

The calculation of workers' compensation benefits can become very complicated. Thus, the examples in this and the following question are *very* oversimplified and are meant solely to give a local official a basic understanding of the interaction between the bill and workers' compensation benefits. TML Risk Pool Members should contact the Pool's workers' compensation department for assistance with individual claims.

That being said, suppose a police officer makes \$52,000 base pay per year is seriously injured in a vehicle collision while on-duty. Assuming the injuries are compensable under workers' compensation law, the city's workers' compensation carrier will pay:

1. "medical benefits" as stated in TEX. LABOR CODE §401.011 (31).
2. temporary income benefits at 70 percent of her "average weekly wage (AWW)," which is currently capped at \$1,174 per week. The following provides more explanation as to her workers' compensation temporary income benefits:
 - a. the AWW is the average of the amount of salary and benefits the employer paid the employee in the 13 weeks before the injury, including, for example, overtime pay (based on the Texas Division of Workers' Compensation form 003 – [Employer's Wage Statement](#)).
 - b. this officer worked a substantial amount of overtime in the previous three months, which raised her average weekly pay from the base amount of \$1,000 to \$1,500.
 - c. she will thus receive the maximum amount of workers' compensation temporary income benefits, which is currently capped at \$1,174 weekly, with no taxes withheld from or paid on the payment.

11. How might H.B. 471 apply to the above scenario?

Again, these examples are for illustrative purposes. TML Risk Pool Members should contact the Pool's workers' compensation department for assistance with individual claims.

The bill provides that she is initially entitled to up to one year of paid leave at "full pay." Whether the city must pay her more than her workers' compensation temporary income benefits during her leave will depend on how the city defines "full pay."

1. If the city defines full pay as her base salary (\$52,000 per year, or \$1,000 per week (less taxes)), there is no differential or "gap" created by subtracting her full pay from her workers' compensation AWW. **This means H.B. 471 may not require the city to supplement her workers' compensation benefits.**
2. If the city defines full pay using the same AWW weekly wage calculation used for her workers' compensation temporary income benefits - (\$52,000 per year, or \$1,000 per week) plus the averaged overtime in the preceding 13 weeks (\$500 per week), her "full pay" would be \$1,500 (less taxes) per week, which creates a differential or "gap" of \$326 per week. **This means H.B. 471 would require the city to supplement her workers' compensation temporary income benefits by paying her an additional \$326 per week.**

12. What steps should a city take to implement H.B. 471?

It's likely that any city with a police, fire, and/or EMS department will eventually have a first responder seek the protections afforded by the bill. In advance of that scenario, city officials may wish to:

1. consult with local legal counsel about whether to adopt local implementing provisions.
2. consider how to define “illness or injury related to a first responder’s line of duty.” For example, city official could decide to assume that the H.B. 471 benefits are available only to supplement a compensable workers’ compensation injury or could restrict or expand the definition to meet local needs and community values.
3. consider how to define “full pay.” For example, a city could choose to refer to the average weekly wage calculation used to determine workers’ compensation benefits or adopt a more restrictive or expansive local definition.
4. adopt policies related to first responder light duty assignments, reinstatement rank and seniority, and voluntary replacement service by qualified first responders.

The above are just some of the considerations city officials should discuss with local legal counsel.

13. What should a TML Risk Pool Member do when receiving a report of injury from a first responder (or any employee)?

A Member city official should immediately report the injury to the TML Risk Pool’s Workers Compensation Department. Pool staff will investigate the claim and respond to the Member with next steps.

Because H.B. 471 is not a workers’ compensation bill, the Pool’s legal staff can’t provide instructions on how to implement the bill.

City officials with questions about H.B. 471 should contact Scott Houston, the Pool’s Intergovernmental Relations Manager, at scott.houston@tmlirp.org or 512-491-2323 with questions.

Mr. Houston may be able to assist or may need to refer the official to the [Texas Municipal League’s Legal Department](#) or their local legal counsel.

14. Is the TML Risk Pool developing a line of coverage that could assist Members with the costs of an H.B. 471 offset?

Yes, the Pool is in the process of determining the feasibility of such coverage. Members will receive information as it becomes available.