

First Responder Workers Compensation Benefits: The Facts

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A *Texas Observer* article and *Texas Standard* interview recently reported on the TML Risk Pool's alleged mistreatment of three first responders who sought workers' compensation benefits from the Pool. They describe the Pool as a mysterious agency making benefits decisions in the dark. As Pool Members know, nothing could be further from the truth. In fact, the process to determine the beneficiaries can be stressful for first responders and their families, and can appear to be cruel and cold-hearted, but the Pool is obligated to get it right.

The TML Risk Pool

The Pool is a group of over 1,000 Texas cities (and 1,800 other local governments) that provides workers' comp, liability, and property coverage. The Pool was created in 1974 because – in 1973 – the Texas Legislature mandated that Texas cities provide workers' comp to their employees. Most traditional insurance companies refused to write the coverage or quoted exorbitant rates. Thus, cities banded together to “pool” their money and do it themselves.

Today, the Pool provides workers comp for around 200,000 local government employees, including 34,000 first responders. An 18-member Board of Trustees – composed primarily of city officials – oversees 250+ employees who administer the coverages. The Pool makes benefit decisions *first-and-foremost to take care of our first responders* because that is what our Members want and expect the Pool to do.

And the Pool has found innovative ways to ensure injured employees get the care they need. For example, when the injured employees of Risk Pool Members had problems finding doctors, the Pool created a network of doctors to treat them. In 2006, the “Political Subdivision Workers’ Compensation Alliance (the Alliance)” was created to provide quick access to top-quality healthcare providers. The Texas Department of Insurance oversees provider networks and has consistently ranked the Alliance among the best.

The Pool also assigns case managers who work with first responders or their families to ensure they get the benefits and medical care owed to them. The *Observer* article listened to just *three* first responders. Since 2019, the Pool has handled almost *17,000* first responder workers' comp claims. Since the inception of the Pool, it's paid over *half a billion dollars in benefits* to injured first responders.

The “First Responders Workers’ Compensation Disease Presumption Law”

In 2005, the Texas Legislature enacted the “first responder disease presumption law (presumption).” The original law said certain diseases contracted by firefighters and EMTs were *presumed* to have been contracted while on duty for workers' comp purposes. Since then, certain presumptions have been extended to police officers, but for a smaller number of diseases because on-the-job exposures are different.

For firefighters, what cancers fell under the presumption was unclear. In 2017, the *Observer* correctly reported, a firefighter from Mission, Texas, contracted a type of kidney cancer called renal cell carcinoma. He filed a presumption claim with the Pool, which the Pool denied at that time because state law (which was later changed in 2019) did not presume that cancer was caused in the line of duty. He appealed to the state's Division of Workers' Compensation, which ruled in his favor. That meant the Pool paid his medical bills and time off from work.

When administrative appeals to the Division of Workers' Compensation are exhausted, the law requires the first responder's employing city to file a lawsuit against the person seeking the benefits. This is how the Texas legislature chose to set up the dispute process. (Lawmakers can change it if they wish.)

If the court ruled in favor of the Pool, what would happen? The effect would be prospective only. The firefighter would have full access to his city health insurance and other benefits, and the Pool would *never* try to "claw back" benefits he has already received, including medical and wage replacement benefits.

In another example, the *Observer* article relayed that the Pool is disputing whether a police officer killed in the line of duty was legally married. Workers' comp law requires the Pool to pay *lifetime* income benefits to a first responder's surviving spouse, including those married by common law.

The Pool had to file suit to have a court determine whether benefits should be paid to the spouse, if the marriage was valid, or to the officer's parents, if it wasn't. Regardless of the officer's marital status, his son will receive workers' comp income benefits until he graduates high school or college.

The Pool's Finances/Workers' Comp Benefits Statistics

A police officer interviewed for the *Observer* article seemed outraged the Pool has "surplus funds" it doesn't pay out to workers. If the Pool has the money, he questions, "why do we need to deny and fight so many claims."

First, the Pool doesn't have "surplus" funds. The Pool asks Members to contribute the amount needed to cover potential costs, and to absorb potentially catastrophic events like the COVID-19 pandemic. Rates are set to ensure costs are covered, and that the Pool can meet its primary mission of stabilizing costs to its members. (The amount of money needed is based on sound accounting principles.)

Recently, the Pool has incurred nearly \$200 million for damage caused by Hurricane Harvey and the 2021 winter storms, and nearly \$100 million in public safety workers' compensation claims based on the COVID-19 presumption. Unlike some insurance companies, the Pool never increases Member contributions to make a profit. In fact, the Pool isn't beholden to shareholders at all. Instead, the Pool is a steward of its Members' taxpayer funds. Because of that, the Pool in fact did what the officer suggested – it used reserve funds for two years, without raising member rates, to absorb the COVID-19 presumption claims.

Second, the Pool doesn't deny many claims. Since 2019, the Pool has accepted and paid almost 17,000 first responder workers' comp claims, which amounts to 89 percent of all claims submitted. For the last three fiscal years, the Pool has incurred over \$135 million in workers' comp claims costs.

Under the presumption alone, since 2005, the Pool has designated over \$85 million to the surviving family members of 53 first responder fatalities. Of that amount, over \$67 million is for 45 fatalities based on the COVID-19 presumption, which applies to claims made over just the past two-and-a-half years.

Other First Responder Benefits

The *Observer* article reads as though a first responder whose claim is challenged is "left out in the cold." That's false. First responders – like other municipal employees – typically have health insurance. If for some reason their workers' comp claim is denied, they can – like any municipal employee – seek treatment using those resources (which are almost always funded by their city).

Also, the family of a Texas first responder who dies in the line of duty receives numerous benefits that other city employees don't. The immediate cash benefit is around \$900,000 (\$389,825 from the federal *Public Safety Officer's Benefits Act* and \$500,000 from the State of Texas), with numerous additional benefits. These are just a few examples:

- The State of Texas: (1) pays all funeral expenses; (2) provides a monthly annuity of up to \$800, depending on the number of surviving children; and (3) for the surviving spouse of a police officer, provides an additional monthly annuity based on the officer's pension amount.
- Any state university or college must provide free tuition to any child of a police officer or firefighter who dies or is disabled in the line of duty.
- The surviving spouse never again pays property taxes on their residence homestead.
- The Texas Municipal Retirement System immediately begins to pay a monthly annuity to the surviving spouse of a vested first responder. (If the city has the supplemental death benefit, the surviving spouse will also receive a monthly payment equal to the first responder's salary.)

The Bottom Line

The Pool recognizes the structured benefits determination process can be hard on any first responder's loved ones. Given the volume of claims handled by the Pool, the nature of the workers' compensation process will naturally result in employees who disagree with the Pool's decisions (and decisions reached by the Texas Division of Workers' Compensation.) The bottom line is the Legislature decided first responders should enjoy workers comp and other benefits that are considerably higher than other city employees. The Pool is duty-bound to act accordingly. The Pool unequivocally honors first responders and takes care of them within the bounds of the law.