

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 554

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-102, IDAHO CODE, TO
2 REVISE DEFINITIONS, TO REMOVE AN OBSOLETE CODE REFERENCE AND TO MAKE
3 TECHNICAL CORRECTIONS; AMENDING SECTION 72-438, IDAHO CODE, TO PROVIDE
4 THAT COMPENSATION SHALL BE PAYABLE FOR DISABILITY OR DEATH RESULTING
5 FROM CERTAIN FIREFIGHTER OCCUPATIONAL DISEASES, TO DEFINE A TERM, TO
6 PROVIDE A PRESUMPTION OF PROXIMATE CAUSATION BETWEEN SPECIFIED DIS-
7 EASES AND EMPLOYMENT AS A FIREFIGHTER, TO PROVIDE FOR REBUTTAL OF THE
8 PRESUMPTION, TO PROVIDE FOR THE DEMONSTRATION OF CAUSAL CONNECTION,
9 TO PROVIDE THAT THE PRESUMPTION SHALL NOT APPLY UNDER CERTAIN CIRCUM-
10 STANCES, TO CLARIFY THAT THE PERIOD OF EMPLOYMENT AS A FIREFIGHTER SHALL
11 BE WITHIN THE STATE OF IDAHO AND TO MAKE TECHNICAL CORRECTIONS; AND PRO-
12 VIDING A SUNSET DATE.
13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Section 72-102, Idaho Code, be, and the same is hereby
16 amended to read as follows:

17 72-102. DEFINITIONS. Words and terms used in the worker's compensa-
18 tion law, unless the context otherwise requires, are defined in the subsec-
19 tions which follow:

20 (1) "Alien" means a person who is not a citizen, a national or a resident
21 of the United States or Canada. Any person not a citizen or national of the
22 United States who relinquishes or is about to relinquish his residence in the
23 United States shall be regarded as an alien.

24 (2) "Balance billing" means charging, billing, or otherwise attempting
25 to collect directly from an injured employee payment for medical services in
26 excess of amounts allowable in compensable claims as provided by rules pro-
27 mulgated by the commission pursuant to section 72-508, Idaho Code.

28 (3) "Beneficiary" means any person who is entitled to income benefits
29 or medical and related benefits under this law.

30 (4) "Burial expenses" means a sum, not to exceed six thousand dollars
31 (\$6,000) for funeral and burial or cremation, together with the actual ex-
32 penses of transportation of the employee's body to his place of residence
33 within the United States or Canada.

34 (5) "Commission" means the industrial commission.

35 (6) "Community service worker" means:

36 (a) Any person who has been convicted of a criminal offense, any juve-
37 nile who has been found to be within the purview of chapter 5, title 20,
38 Idaho Code, and who has been informally diverted under the provisions of
39 section 20-511, Idaho Code, or any person or youth who has been diverted
40 from the criminal or juvenile justice system and who performs a public
41 service for any department, institution, office, college, university,
42 authority, division, board, bureau, commission, council, or other en-

1 tity of the state, or any city, county, school district, irrigation dis-
2 trict or other taxing district authorized to levy a tax or an assess-
3 ment or any other political subdivision or any private not-for-profit
4 agency which has elected worker's compensation insurance coverage for
5 such person; or

6 (b) Parolees under department of correction supervision, probationers
7 under court order or department of correction supervision and offender
8 residents of community work centers under the direction or order of the
9 board of correction who are performing public service or community ser-
10 vice work for any of the entities specified in paragraph ~~(6)~~(a) of this
11 subsubsection other than the department of correction.

12 (7) "Compensation" used collectively means any or all of the income
13 benefits and the medical and related benefits and medical services.

14 (8) "Custom farmer" means a person who contracts to supply operated
15 equipment to a proprietor of a farm for the purpose of performing part or all
16 of the activities related to raising or harvesting agricultural or horticul-
17 tural commodities.

18 (9) "Death" means death resulting from an injury or occupational dis-
19 ease.

20 (10) Dependency limitations.

21 (a) "Adopted" and "adoption" include cases where persons are treated
22 as adopted as well as those of legal adoption unless legal adoption is
23 specifically provided.

24 (b) "Brother" and "sister" include stepbrothers and stepsisters, half
25 brothers and half sisters, and brothers and sisters by adoption.

26 (c) "Child" includes adopted children, posthumous children, and ac-
27 knowledged illegitimate children, but does not include stepchildren
28 unless actually dependent.

29 (d) "Grandchild" includes children of legally adopted children and
30 children of stepchildren, but does not include stepchildren of chil-
31 dren, stepchildren of stepchildren, or stepchildren of adopted chil-
32 dren unless actually dependent.

33 (e) "Parent" includes stepparents and parents by adoption.

34 (f) "Grandparent" includes parents of parents by adoption, but does not
35 include parents of stepparents, stepparents of parents, or stepparents
36 of stepparents.

37 (11) "Disability," for purposes of determining total or partial tempo-
38 rary disability income benefits, means a decrease in wage-earning capacity
39 due to injury or occupational disease, as such capacity is affected by the
40 medical factor of physical impairment, and by pertinent nonmedical factors
41 as provided in section 72-430, Idaho Code.

42 (12) "Employee" is synonymous with "workman" and means any person who
43 has entered into the employment of, or who works under contract of service
44 or apprenticeship with, an employer. It does not include any person engaged
45 in any of the excepted employments enumerated in section 72-212, Idaho Code,
46 unless an election as provided in section 72-213, Idaho Code, has been filed.
47 It does, however, include a volunteer firefighter for purposes of section
48 72-438(12) and (14), Idaho Code. Any reference to an employee who has been
49 injured shall, where the employee is dead, include a reference to his depen-

1 dents as herein defined, if the context so requires, or, where the employee
2 is a minor or incompetent, to his committee or guardian or next friend.

3 (13) (a) "Employer" means any person who has expressly or impliedly
4 hired or contracted the services of another. It includes contractors
5 and subcontractors. It includes the owner or lessee of premises, or
6 other person who is virtually the proprietor or operator of the busi-
7 ness there carried on, but who, by reason of there being an independent
8 contractor or for any other reason, is not the direct employer of the
9 workers there employed. It also includes, for purposes of section
10 72-438(12) and (14), Idaho Code, a municipality, village, county or
11 fire district that utilizes the services of volunteer firefighters. If
12 the employer is secured, it means his surety so far as applicable.

13 (b) "Professional employer" means a professional employer as defined
14 in chapter 24, title 44, Idaho Code.

15 (c) "Temporary employer" means the employer of temporary employees as
16 defined in section 44-2403(7), Idaho Code.

17 (d) "Work site employer" means the client of the temporary or profes-
18 sional employer with whom a worker has been placed.

19 (14) "Farm labor contractor" means any person or his agent or subcon-
20 tractor who, for a fee, recruits and employs ~~farm workers~~ farmworkers and
21 performs any farm labor contracting activity.

22 (15) "Gender and number." The masculine gender includes the feminine
23 and neuter; "husband" or "wife" includes "spouse"; the singular number in-
24 cludes plural and the plural the singular.

25 (16) "Income benefits" means payments provided for or made under the
26 provisions of this law to the injured employee disabled by an injury or occu-
27 pational disease, or his dependents in case of death, excluding medical and
28 related benefits.

29 (17) "Independent contractor" means any person who renders service for
30 a specified recompense for a specified result, under the right to control or
31 actual control of his principal as to the result of his work only and not as to
32 the means by which such result is accomplished. For the purposes of worker's
33 compensation law, a custom farmer is considered to be an independent con-
34 tractor.

35 (18) "Injury" and "accident."

36 (a) "Injury" means a personal injury caused by an accident arising out
37 of and in the course of any employment covered by the worker's compensa-
38 tion law.

39 (b) "Accident" means an unexpected, undesigned, and unlooked for
40 mishap, or untoward event, connected with the industry in which it oc-
41 curs, and which can be reasonably located as to time when and place where
42 it occurred, causing an injury.

43 (c) "Injury" and "personal injury" shall be construed to include only
44 an injury caused by an accident, which results in violence to the phys-
45 ical structure of the body. The terms shall in no case be construed to
46 include an occupational disease and only such nonoccupational diseases
47 as result directly from an injury.

48 (19) "Manifestation" means the time when an employee knows that he has
49 an occupational disease, or whenever a qualified physician shall inform the
50 injured worker that he has an occupational disease.

1 (20) "Medical and related benefits" means payments provided for or made
2 for medical, hospital, burial and other services as provided in this law
3 other than income benefits.

4 (21) "Medical services" means medical, surgical, dental or other atten-
5 dance or treatment, nurse and hospital service, medicines, apparatus, ap-
6 pliances, prostheses, and related services, facilities and supplies.

7 (22) "Occupational diseases."

8 (a) "Occupational disease" means a disease due to the nature of an
9 employment in which the hazards of such disease actually exist, are
10 characteristic of, and peculiar to the trade, occupation, process, or
11 employment, but shall not include psychological injuries, disorders
12 or conditions unless the conditions set forth in section 72-451, Idaho
13 Code, are met.

14 (b) "Contracted" and "incurred," when referring to an occupational
15 disease, shall be deemed the equivalent of the term "arising out of and
16 in the course of" employment.

17 (c) "Disablement," except in the case of silicosis, means the event of
18 an employee's becoming actually and totally incapacitated because of
19 an occupational disease from performing his work in the last occupation
20 in which injuriously exposed to the hazards of such disease; and "dis-
21 ability" means the state of being so incapacitated.

22 (d) "Disablement," in the case of silicosis, means the event of first
23 becoming actually incapacitated, because of such disease, from per-
24 forming any work in any remunerative employment; and "disability" means
25 the state of being so incapacitated.

26 (e) "Silicosis" means the characteristic fibrotic condition of the
27 lungs caused by the inhalation of silicon dioxide (SiO₂) dust.

28 (23) "Outworker" means a person to whom articles or materials are fur-
29 nished to be treated in any way on premises not under the control or manage-
30 ment of the person who furnished them.

31 (24) "Person" means the state or any political subdivision thereof, or
32 any individual, partnership, firm, association, trust, corporation, in-
33 cluding the state insurance fund, or any representative thereof.

34 (25) "Physician" means medical physicians and surgeons, ophthalmolo-
35 gists, otorhinolaryngologists, dentists, osteopaths, osteopathic physi-
36 cians and surgeons, optometrists, podiatrists, chiropractic physicians,
37 and members of any other healing profession licensed or authorized by the
38 statutes of this state to practice such profession within the scope of their
39 practice as defined by the statutes of this state and as authorized by their
40 licenses.

41 (26) "Provider" means any person, firm, corporation, partnership, as-
42 sociation, agency, institution, or other legal entity providing any kind of
43 medical services related to the treatment of an injured employee which are
44 compensable under Idaho's worker's compensation law.

45 (27) "Secretary" means the secretary of the commission.

46 (28) "Self-insurer" means an employer who has been authorized under the
47 provisions of this law to carry his own liability to his employees covered by
48 this law.

49 (29) "State" includes any state, district, commonwealth, zone or terri-
50 tory of the United States or any province of Canada.

1 (30) "Surety" means any insurer authorized to insure or guarantee pay-
2 ment of worker's compensation liability of employers in any state; it also
3 includes the state insurance fund, a self-insurer and an inter-insurance ex-
4 change.

5 (31) "United States," when used in a geographic sense, means the several
6 states, the District of Columbia, the Commonwealth of Puerto Rico, ~~the Canal~~
7 ~~Zone~~ and the territories of the United States.

8 (32) "Volunteer emergency responder" means a firefighter or peace offi-
9 cer, or publicly employed certified personnel ~~as that term is defined in sec-~~
10 ~~tion 56-1012, Idaho Code,~~ who is a bona fide member of a legally organized law
11 enforcement agency, a legally organized fire department or a licensed emer-
12 gency medical service provider organization who contributes services.

13 (33) "Wages" and "wage_earning capacity" prior to the injury or dis-
14 ablement from occupational disease mean the employee's money payments for
15 services as calculated under section 72-419, Idaho Code, and shall addition-
16 ally include the reasonable market value of board, rent, housing, lodging,
17 fuel, and other advantages which can be estimated in money which the employee
18 receives from the employer as part of his remuneration, and gratuities re-
19 ceived in the course of employment from others than the employer. "Wages"
20 shall not include sums which the employer has paid to the employee to cover
21 any special expenses entailed on him by the nature of his employment.

22 (34) "Wages" and "wage_earning capacity" after the injury or disable-
23 ment from occupational disease shall be presumed to be the actual earnings
24 after the injury or disablement, which presumption may be overcome by show-
25 ing that those earnings do not fairly and reasonably represent wage earning
26 capacity; in such a case, wage_earning capacity shall be determined in the
27 light of all factors and circumstances which may affect the worker's capac-
28 ity to earn wages.

29 (35) "Work experience student" means any person enrolled in the public
30 school districts or public institutions of higher education of this state
31 and who, as part of his instruction, is enrolled in a class or program for
32 academic credit and for which the student is employed by, or works for, a
33 private or governmental entity. The student need not receive wages from the
34 private or governmental entity in order to be classified as a work experience
35 student.

36 (36) "Worker's compensation law" or "workmen's compensation law" means
37 and includes the worker's compensation law of this state and any like or sim-
38 ilar law of any state, United States, territory, or province of Canada.

39 SECTION 2. That Section 72-438, Idaho Code, be, and the same is hereby
40 amended to read as follows:

41 72-438. OCCUPATIONAL DISEASES. Compensation shall be payable for dis-
42 ability or death of an employee resulting from the following occupational
43 diseases:

44 (1) Poisoning by lead, mercury, arsenic, zinc, or manganese, their
45 preparations or compounds in any occupation involving direct contact there-
46 with, handling thereof, or exposure thereto.

47 (2) Carbon monoxide poisoning or chlorine poisoning in any process
48 or occupation involving direct exposure to carbon monoxide or chlorine in
49 buildings, sheds, or ~~in~~ enclosed places.

1 (3) Poisoning by methanol, carbon bisulphide, hydrocarbon distillates
2 (naphthas and others) or halogenated hydrocarbons, or any preparations con-
3 taining these chemicals or any of them, in any occupation involving direct
4 contact therewith, handling thereof, or exposure thereto.

5 (4) Poisoning by benzol or by nitro, amido, or amino-derivatives of
6 benzol (dinitro-benzol, anilin and others) or their preparations or com-
7 pounds in any occupation involving direct contact therewith, handling
8 thereof, or exposure thereto.

9 (5) Glanders in the care or handling of any equine animal or the carcass
10 of any such animal.

11 (6) Radium poisoning by or disability due to radioactive properties of
12 substances or to ~~Roentgenray~~ roentgen ray (X-ray) in any occupation involv-
13 ing direct contact therewith, handling thereof, or exposure thereto.

14 (7) Poisoning by or ulceration from chromic acid or bichromate of am-
15 monium, potassium, or sodium or their preparations, or phosphorus prepara-
16 tions or compounds, in any occupation involving direct contact therewith,
17 handling thereof, or exposure thereto.

18 (8) Ulceration due to tar, pitch, bitumen, mineral oil, or paraffin,
19 or any compound product, or residue of any of these substances, in any oc-
20 cupation involving direct contact therewith, handling thereof, or exposure
21 thereto.

22 (9) Dermatitis venenata, that is, infection or inflammation of the
23 skin, furunculosis excepted, due to oils, cutting compounds, lubricants,
24 liquids, fumes, gases, or vapors in any occupation involving direct contact
25 therewith, handling thereof, or exposure thereto.

26 (10) Anthrax occurring in any occupation involving the handling of or
27 exposure to wool, hair, bristles, hides, skins, or bodies of animals either
28 alive or dead.

29 (11) Silicosis in any occupation involving direct contact with, han-
30 dling of, or exposure to dust of silicon dioxide (SiO₂).

31 (12) Cardiovascular or pulmonary or respiratory diseases of a ~~paid~~
32 fireman firefighter, employed by or volunteering for a municipality, vil-
33 lage or fire district as a regular member of a lawfully established fire
34 department, caused by overexertion in times of stress or danger or by prox-
35 imate exposure or by cumulative exposure over a period of four (4) years or
36 more to heat, smoke, chemical fumes or other toxic gases arising directly out
37 of, and in the course of, his employment.

38 (13) Acquired immunodeficiency syndrome (AIDS), AIDS-related com-
39 plexes (ARC), other manifestations of human immunodeficiency virus (HIV)
40 infections, infectious hepatitis viruses and tuberculosis in any occupation
41 involving exposure to human blood or body fluids.

42 (14) Firefighter occupational diseases:

43 (a) As used in this subsection, "firefighter" means an employee whose
44 primary duty is that of extinguishing or investigating fires as part of
45 a fire district, fire department or fire brigade.

46 (b) If a firefighter is diagnosed with one (1) or more of the following
47 diseases after the period of employment indicated in subparagraphs (i)
48 through (xi) of this paragraph, and the disease was not revealed dur-
49 ing an initial employment medical screening examination that was per-
50 formed according to such standards and conditions as may be established

1 at the sole discretion of the governing board having authority over a
 2 given fire district, fire department, or fire brigade, then the disease
 3 shall be presumed to be proximately caused by the firefighter's employ-
 4 ment as a firefighter;

5 (i) Brain cancer after ten (10) years;

6 (ii) Bladder cancer after twelve (12) years;

7 (iii) Kidney cancer after fifteen (15) years;

8 (iv) Colorectal cancer after ten (10) years;

9 (v) Non-Hodgkin's lymphoma after fifteen (15) years;

10 (vi) Leukemia after five (5) years;

11 (vii) Mesothelioma after ten (10) years;

12 (viii) Testicular cancer after five (5) years if diagnosed before
 13 the age of forty (40) years with no evidence of anabolic steroids
 14 or human growth hormone use;

15 (ix) Breast cancer after five (5) years if diagnosed before the
 16 age of forty (40) years without a breast cancer 1 or breast cancer 2
 17 genetic predisposition to breast cancer;

18 (x) Esophageal cancer after ten (10) years; and

19 (xi) Multiple myeloma after fifteen (15) years.

20 (c) The presumption created in this subsection may be overcome by sub-
 21 stantial evidence to the contrary. If the presumption is overcome by
 22 substantial evidence, then the firefighter or the beneficiaries must
 23 prove that the firefighter's disease was caused by his or her duties of
 24 employment.

25 (d) The presumption created in this subsection shall not preclude a
 26 firefighter from demonstrating a causal connection between employment
 27 and disease or injury by a preponderance of evidence before the Idaho
 28 industrial commission.

29 (e) The presumption created in this subsection shall not apply to any
 30 specified disease diagnosed more than ten (10) years following the last
 31 date on which the firefighter actually worked as a firefighter as de-
 32 finied in paragraph (a) of this subsection. Nor shall the presumption
 33 apply if a firefighter or a firefighter's cohabitant has regularly and
 34 habitually used tobacco products for ten (10) or more years prior to the
 35 diagnosis.

36 (f) The periods of employment described in paragraph (b) of this sub-
 37 section refer to periods of employment within the state of Idaho.

38 Recognizing that additional toxic or harmful substances or matter are
 39 continually being discovered and used or misused, the above enumerated oc-
 40 cupational diseases are not intended to be exclusive, but such additional
 41 diseases shall not include hazards ~~which that~~ which that are common to the public in
 42 general and ~~which that~~ which that are not within the meaning of section 72-102(22) (a),
 43 Idaho Code, and the diseases enumerated in subsection (12) of this section
 44 pertaining to ~~paid firemen~~ firefighters shall not be subject to the limita-
 45 tions prescribed in section 72-439, Idaho Code.

46 SECTION 3. The provisions of this act shall be null, void and of no force
 47 and effect on and after July 1, 2021.