UNDERSTANDING PENNSYLVANIA’S HEART & LUNG ACT
THE LAW AND PROCESS

PennPRIME Risk Management Conference
State College, Pennsylvania
September 20, 2018

Presented by:
Angela Tennis
Director of Insurance Services
PennPRIME Insurance Trust

Gary M. Scoulas, Esquire
Meyer Darragh Buckler Bebenek & Eck, PLLC
UNDERSTANDING PENNSYLVANIA'S HEART & LUNG ACT

THE LAW AND PROCESS

I. The Law


1. "Heart & Lung Act", a misnomer. Statute entitled "Enforcement Officer Disability Benefits Law." Statute covers more than heart and lung injuries and diseases. (See Attachment #1 for statute)

2. Covered employees include: police, paid firefighters, park guards. Volunteers are not covered.

3. Benefits: Requires a continuation of full salary during period of incapacity, and payment of medical expenses. Salary is the amount set by ordinance, the "base pay," and does not include over-time, holiday, or vacation pay earned by the officer. Income, Social Security and Medicare taxes are not to be deducted from salary subject to certain limitations.

4. Compensability Standard: Injury must occur during "performance of duties." The tests are whether the officer was engaged in an obligatory task or function that arose from status of police officer, or fireman, or whether the injury resulted from an event that triggered an official police or fire response. Compare workers' compensation standard "course of employment."

5. Heart and Lung Act does not apply to injuries causing permanent disability. Applies to "temporary incapacities".

6. Heart and Lung Act does not provide death benefits.

B. Compare Pennsylvania's Workers' Compensation Act. 77 P.S. §1 et seq.

1. Covers virtually all employees and some types of volunteers, including fire, fire police, ambulance, water rescue, and hazardous materials.

2. Compensability Standard: Injury or disease must arise during course of employment and be related thereto. Liberal definitions of "injuries" and "diseases".

Examples
a. Fireman injured in parking lot coming into station to begin shift.

b. Police injured while training with service revolver at home.

c. Policewoman injured exercising at home in preparation for mandated annual physical.

d. Policeman injured apprehending suspect but fails to report injury for six months.

3. Benefits are a percentage of average weekly wage, generally two-thirds, subject to statutory maximum which varies by year. Overtime and vacation pay included. Medical benefits are provided.

C. Coordination of Benefits

If employee receives both Heart and Lung Act and workers' compensation benefits, he/she is to turn over the workers' compensation benefits to municipality. If not, the municipality may deduct workers' compensation from Heart and Lung Act payments.

II. Process

A. Overview

In general, Heart and Lung Act claims are processed by the municipality, and not the municipality's workers' compensation insurer or administrator. The workers' compensation system has no jurisdiction over Heart and Lung Act issues.

Heart and Lung Act claims are subject to a hearing in accordance with local agency law, or pursuant to procedure contained in collective bargaining agreement. A local agency hearing or CBA process is usually not necessary unless claim is denied and employee challenges denial and demands benefits, or municipality desires to terminate benefits.

B. Administrative Process

1. Municipality should create thoughtful and deliberate process by:

   a. Identifying person responsible to receive and channel claims, collect information, maintain file, and communicate with others.

   b. Identifying person(s) responsible to decide, in the first instance, if benefits are granted or denied.
c. Communicating and sharing information with Inservco Insurance Services, Inc.

d. Communicating with injured officer, department supervisors, and municipal solicitor.

2. Workers' compensation law requires that a decision to accept or deny claim be made within 21 days from date employer received notice of injury. Heart and Lung Act does not specify a time deadline, but using 21 day rule is good practice.

3. Advise officer of decision and right to challenge denial via local agency hearing (if applicable). (See Attached sample letter 1 and 2)

C. Litigating the denied claim.

1. If municipality denies Heart and Lung Act liability, and officer challenges denial and demand benefits, then:

   a. Schedule local agency hearing, or follow process contained in collective bargaining agreement.

   b. If local agency hearing is held, requirements of local agency law must be followed:

      1. Hearing to be held before governing body of municipality.

      2. Notice to officer of date, time, and place of hearing, and of right to legal representation at hearing. (See Attached sample letter 3)

      3. Officer permitted to offer exhibits and witnesses at hearing.

      4. Municipal solicitor usually functions as hearing officer. Another attorney is hired to present the case supporting the denial.

      5. The decision of the governing body must be reduced to writing and served on officer.

      6. Officer has right to appeal local agency determination. The Courts of Common Pleas have jurisdiction over local agency appeals.

D. Litigating the termination of Heart and Lung Act benefits.
1. Grounds: The usual grounds supporting a municipality’s attempt to terminate Heart and Lung Act liability are either that the disability has resolved, or can no longer be considered “temporary”.

2. The same process and procedures applies to terminating Heart and Lung Act benefits - local agency hearing or process contained in collective bargaining agreement. (See Attached sample letter 4)

E. The importance of communicating with Inservco Insurance Services, Inc.

1. If Inservco Insurance Services, Inc. proceeds to terminate workers’ compensation liability, unless the municipality simultaneously terminates Heart and Lung Act liability, the municipality will no longer receive officer' workers’ compensation checks.

2. If the municipality terminates Heart and Lung Act liability based on evidence unknown to or discredited by Inservco Insurance Services, Inc., Inservco may be precluded from terminating workers’ compensation liability because of a local agency adjudication of permanency.

III. PennPRIME’s Products and Service

A. Assist with the coordination of workers’ compensation and Heart and Lung Act claims.

   1. Will review claims reports submitted to Inservco and will notify municipality of potential Heart and Lung Act liability.

   2. Will answer questions regarding the processing of claims.

B. Heart and Lung Act insurance coverage.
PENNSYLVANIA HEART AND LUNG ACT
§ 637. Enforcement officer disability benefits

(a) Be it enacted, That:
   (1) any member of the State Police Force,
   (2) any enforcement officer or investigator employed by the Pennsylvania Liquor Control Board;
   (3) the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole
   (4) Capitol Police officers;
   (5) correction employes employed by the Department of Corrections, whose principal duty is the care, custody and control of inmates;
   (6) psychiatric security aides employed by the Department of Human Services and the Department of Corrections, whose principal duty is the care, custody, and control of the criminally insane;
   (7) drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth;
   (8) special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth;
   (9) any member of the Delaware River Port Authority Police;
   (10) any policeman, fireman or park guard of any county, city, borough, town or township;
   (10.1) firemen employed by the Commonwealth;
   (11) any sheriff or deputy sheriff; or
   (12) any enforcement officer or investigator of the Pennsylvania Game Commission or the Pennsylvania Fish and Boat Commission;

who is injured in the performance of his duties including, in the case of firemen, duty as special fire police, and by reason thereof is temporarily incapacitated from performing his duties, shall be paid by the Commonwealth of Pennsylvania if an employe identified under paragraph (1), (2), (3), (4), (5), (6), (7), (8) or (12) or by the Delaware River Port Authority if a member of the Delaware River Port Authority Police or by the county, township or municipality, by which he is employed, his full rate of salary, as fixed by ordinance or resolution, until the disability arising therefrom has ceased. All medical and hospital bills, incurred in connection with any such injury, shall be paid by the Commonwealth of Pennsylvania or by the Delaware River Port Authority or by such county, city, township or municipality. During the time salary for temporary incapacity shall be paid by the Commonwealth of Pennsylvania or by the Delaware River Port Authority or by the county, city, borough, town or township, any workmen's compensation, received or collected by any such employe for such period, shall be turned over to the Commonwealth of Pennsylvania or to the Delaware River Port Authority or to such county, city, borough, town or township, and paid into the treasury thereof, and if such payment shall not be so made by the employe the amount so due the Commonwealth of Pennsylvania, the Delaware River Port Authority or the county, city, borough, town or township shall be deducted from any salary then or thereafter becoming due and owing.

(b) In the case of:
   (1) the State Police Force;
   (2) enforcement officers and investigators employed by the Pennsylvania Liquor Control Board;
(3) the parole agents, enforcement officers and investigators of the Pennsylvania Board of Probation and Parole;
(4) Capitol Police officers;
(5) correction employees employed by the Department of Corrections, whose principal duty is the care, custody and control of inmates;
(6) psychiatric security aides employed by the Department of Human Services and the Department of Corrections whose principal duty is the care, custody, and control of the criminally insane;
(7) drug enforcement agents of the Office of Attorney General whose principal duty is the enforcement of the drug laws of the Commonwealth;
(8) special agents of the Office of Attorney General whose principal duty is the enforcement of the criminal laws of the Commonwealth;
(9) members of the Delaware River Port Authority Police;
(10) salaried policemen and firemen;
(10.1) firemen employed by the Commonwealth;
(11) sheriffs and deputy sheriffs; and
(12) enforcement officers and investigators of the Pennsylvania Game Commission and the Pennsylvania Fish and Boat Commission;

who have served for four consecutive years or longer, diseases of the heart and tuberculosis of the respiratory system, contracted or incurred by any of them after four years of continuous service as such, and caused by extreme overexertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising directly out of the employment shall be compensable in accordance with the terms hereof; and unless any such disability shall be compensable under the compensation laws as having been caused by accidental injury, such disability shall be compensable as occupational disease disabilities are presently compensable under the compensation laws of this Commonwealth. It shall be presumed that tuberculosis of the respiratory system contracted or incurred after four consecutive years of service was contracted or incurred as a direct result of employment.

(c) In the case of any person receiving benefits pursuant to this act, the statutes of limitations set forth in sections 306.1, 315, 413, and 434 of the act of June 2, 1915 (P.L.736, No.338), known as the "Workers' Compensation Act," shall not begin to run until the expiration of the receipt of benefits pursuant to this act.

(d) All payments herein required to be made by the Commonwealth of Pennsylvania on account of any member of the State Police Force shall be made from moneys appropriated to the Pennsylvania State Police.

(2) Any payments required to be made on account of any enforcement officer or investigator employed by the Pennsylvania Liquor Control Board shall be made from appropriations out of the State Stores Fund.

(3) Any payments required to be made on account of any parole agent, enforcement officer or investigator employed by the Pennsylvania Board of Probation and Parole shall be made from moneys appropriated to the Pennsylvania Board of Probation and Parole.

(4) Any payments required to be made on account of Capitol Police officers shall be made from moneys appropriated to the Department of General Services.

(5) Any payments required to be made on account of any correction employee shall be made from moneys appropriated to the Department of Corrections.

(6) Any payments required to be made on account of any psychiatric security aides shall be made from moneys appropriated to the Department of Human Services or the Department of Corrections where appropriate.
(7) Any payments required to be made on account of any drug enforcement agent or special agents shall be made from moneys appropriated to the Office of Attorney General and any payments required to be made on account of any fireman employed by the Commonwealth shall be made from moneys appropriated to the employing agency.

(8) Any payments required to be made on account of any enforcement officers or investigators of the Pennsylvania Game Commission shall be made from moneys appropriated to the Pennsylvania Game Commission or executively authorized from the Game Fund under 31 Pa.C.S. Ch. 5 Subch. B (relating to Game Fund).

(9) Any payments required to be made on account of any enforcement officers or investigators of the Pennsylvania Fish and Boat Commission shall be made from moneys appropriated to the Pennsylvania Fish and Boat Commission or executively authorized from the Fish Fund under 30 Pa.C.S. Ch. 5 Subch. B (relating to the Fish Fund) or the Boat Fund under 30 Pa.C.S. Ch. 5 Subch. C (relating to the Boat Fund).
Sample 1 - Claim Accepted

Dear Officer Smith:

Your claim for benefits under Pennsylvania’s Heart and Lung Act, 53 P.S. §637 has been reviewed.

Please be advised that your claim has been accepted. Accordingly, your salary will continue in accordance with the Act. Please be aware that if you receive workers' compensation benefits during any period that your salary continues, the law requires that you turn over your workers' compensation checks to the municipality. Otherwise, the amount of those checks will be deducted from your continuing salary.

Sincerely,

________________________

Sample 2 - Claim Denied

Dear Officer Smith:

Your claim for benefits under Pennsylvania’s Heart and Lung Act, 53 P.S. §637 has been reviewed.

Please be advised that your claim has been denied on the basis that: [1) the injury did not occur in the performance of your duties; 2) though an injury took place, you remained capable of performing your job duties; 3) your current disability is not related to the injury; 4) the disability associated with your injury does not appear to be temporary in nature.]

Should you wish to contest this determination, the law affords you the right to request a local agency hearing. Should you desire such a hearing, please submit your request in writing.

Sincerely,

________________________
Sample 3 - Acknowledging Request For and Scheduling Local Agency Hearing

Dear Officer Smith:

We have received your written request for a local agency hearing to challenge the denial of your claim for Heart and Lung Act benefits.

Please be advised that a hearing will be held on _ day of__________, 20__ before the [Governing Body] at the municipal building.

The hearing will proceed in accordance with the applicable Rules of Administrative Practice and Procedure, 2 Pa.C.S. §101 et seq. You have a right to be represented at the hearing by an attorney to submit evidence and present witnesses.

Should you have any questions, please do not hesitate to contact me.

Sincerely,
Sample 4 -

Dear Officer Smith:

Based on information received regarding the status of the injury underlying your claim for Heart and Lung Act benefits, the municipality will seek to terminate its liability to continue to pay those benefits. Specifically, the municipality asserts that (you have recovered from the injury and can resume your employment) or (the disability caused by your injury is no longer temporary).

If you agree with this assertion and consent to the termination of Heart and Lung Act benefits, kindly sign the enclosed form and return that form as soon as possible.

Otherwise, please be aware that a hearing addressing your continuing eligibility for benefits will be held on _ day of ______________, 20 before the [Governing Body] at the municipal building.

Sincerely,

Enclosure to letter:

To Whom It May Concern:

I hereby acknowledge receipt of the municipality’s letter dated ______________ regarding the termination of my Heart and Lung Act

Please I consent to a termination of those benefits and agree to waive my right to a local agency hearing.

Sincerely,