

SEPTEMBER 11
WORKER PROTECTION TASK FORCE
ANNUAL REPORT

JUNE 1, 2008



September 11th Worker Protection Task Force

Introduction

Many public employees, including police, fire, correction, sanitation and civilians rendered rescue, recovery and cleanup at the former World Trade Center site and other designated locations.... [T]he State must recognize the services that these individuals provided not only to the victims and their families, but to all citizens of the City and State of New York and the United States of America. As a result, it is only fitting that they be protected when a disability ensues as a consequence of their selfless acts of bravery working at the World Trade Center site and other sites.

Sponsors' Memorandum in Support of Legislation (A6281A, enacted as Laws of 2005, Chapter 104, amended by Laws of 2005, Chapter 93, hereinafter referred to as the "World Trade Center disability law").

Charter

The September 11th Worker Protection Task Force ("Task Force") was created by the September 11th Worker Protection Task Force Act, which was enacted as part of the World Trade Center disability law. Laws of 2005, Chapter 104, Part B, as amended, Laws of 2005, Chapter 93, section 14.

The World Trade Center disability law amended the New York State Retirement and Social Security Law and the New York City Administrative Code to provide that any public employee who suffered an injury or illness directly related to the terrorist attacks on September 11, 2001, be presumptively eligible for an accidental disability. There are 19 members of the Task Force who are appointed as follows:

- Six members by the Governor
- Three members by the Temporary President of the Senate, two of whom shall be representatives from the organizations representing workers at the World Trade Center site and one of whom shall be a representative of a recognized health organization with appropriate expertise;
- Three members by the Speaker of the Assembly, two of whom shall be representatives from the organizations representing workers at the World Trade Center site and one of who shall be a representative of a recognized health organization with appropriate expertise;

- The State comptroller or his or her representative;
- The Comptroller of the City of New York or his or her representative;
- The Mayor of the City of New York or his or her representative;
- The Commissioner of the State Department of Health or his or her representative;
- The Commissioner of the State Department of Labor or his or her representative;
- The Director of the State Division of the Budget or his or her representative; and
- The Commissioner of the State Department of Civil Service or his or her representative.

Task Force Members

The members of the Task Force are as follows:

- Dr. Thomas K. **Aldrich**, Pulmonary Medical Division, Montefiore Medical Center, **Chair**
- Lou **Matarazzo**, Executive Director, Detectives Endowment Association, **Vice Chair**
- Laura L. **Anglin**, Director, New York State Division of the Budget
- Michael **Bloomberg**, Mayor, New York City
- Stephen J. **Cassidy**, President, Uniformed Firefighters Association
- Dr. Richard F. **Daines**, Commissioner, New York State Department of Health
- Thomas **DiNapoli**, New York State Comptroller
- Nancy G. **Groenwegen**, Commissioner, New York State Department of Civil Service
- Dr. Stephen **Levin**, Mt. Sinai-Irving J. Selikoff Center for Occupational and Environmental Medicine
- Patrick J. **Lynch**, President, New York City PBA
- John J. **McDonnell**, President, New York City Uniformed Firefighters
- Peter D. **Meringolo**, Chairman, New York State Public Employees Conference
- Thomas G. **Osimitz**, Ph.D, Science Strategies LLC
- Dr. Jay **Poliner**, Poliner and Associates
- Dr. David **Prezant**, Chief Medical Officer, Office of Medical Affairs, New York City Fire Department
- Lillian **Roberts**, Executive Director, District Council 37, AFSCME, AFL-CIO
- David J. **Rosenzweig**, President, Uniform Fire Dispatch Benevolent Association

- M. Patricia **Smith**, Commissioner, New York State Department of Labor
- William **C. Thompson, Jr.**, New York City Comptroller

Individuals who regularly participated in the Task Force as representatives for certain members included:

- Pico **Ben-Amotz**, Esq. for M. Patricia Smith, Commissioner, New York State Department of Labor
- John **Burke** for Laura L. Anglin, Director, New York State Division of the Budget
- Lee **Clarke** for Lillian Roberts, Executive Director, District Council 37, AFSCME, AFL-CIO
- Robert **Coughlin**, Esq. for Thomas DiNapoli, New York State Comptroller
- Anthony **Crowell**, Esq. for Michael Bloomberg, Mayor, New York City
- Dr. Richard **Ciulla** for Nancy G. Groenwegen, Commissioner, New York State Department of Civil Service
- Lewis **Finkelman**, Esq. for William Thompson, New York City Comptroller
- Brian **Geller**, Esq. for Michael Bloomberg, Mayor, New York City
- Joey Kara **Koch**, Esq. for Michael Bloomberg, Mayor, New York City
- Dr. Matthew P. **Mauer** for Dr. Richard F. Daines, Commissioner, New York State Department of Health
- Christopher J. **McGrath**, Esq. for Patrick J. Lynch
- William **Romaka** for Stephen J. Cassidy, President, Uniformed Firefighters Association
- Richard **Simon**, Esq. for William Thompson, New York City Comptroller

Mission

The purpose of the World Trade Center disability law was to establish presumptive eligibility for accidental disability for the “public employees, including police, fire, correction, sanitation and civilians” who “rendered rescue, recovery and clean up at the former world trade center site and other designated locations” so that they can “be protected when a disability ensues.” Sponsor’s Memo in support of A6281A.

The Task Force was created in recognition of “health issues and concerns of the workers who participated in the rescue, recovery and clean up of the World Trade Center and related areas”. September 11th Worker Protection Task Force Act at section 2 (Laws of 2005, Chapter 104, Part B, section 2).

The Task Force is required to submit annual reports on or before June 1 to the governor, the temporary president of the senate and the speaker of the assembly that address (a) the progress being made in fulfilling the duties of the Task Force and in developing recommendations; and (b) recommend strategies or actions for ongoing monitoring and treatment of individuals.

The Task Force has the following duties relating to workers who participated in the World Trade Center rescue, recovery and cleanup:

- a) to obtain from the department of health and the New York city department of health, such departments’ review of statistical and qualitative data on the prevalence and incidence of sickness, illness and disability of such workers;
- (b) to obtain from other sources reviews of statistical and qualitative data on the prevalence and incidence of sickness, illness and disability of such workers;
- (c) assess based upon evidence presented, the nature, scope and magnitude of the health impacts caused by exposure to air and elements;
- (d) measure the adverse health effects of exposure on such workers;
- (e) to consult with any organization, health institution, governmental agency or person including, but not limited to, the department of health, the department of environmental conservation, the federal environmental protection agency, the New York committee for occupational safety and health and the occupational safety and health administration;
- (f) to identify and examine the limitations of any existing laws, regulations, programs, and services with regard to coverage, extent of disability,

process for determination, adequacy of coverage and treatment of specific types of disabilities and to undertake any recommendations;

(g) to receive and to consider reports and testimony from individuals, the health department, community-based organizations, voluntary health organizations, and other public and private organizations statewide to learn more about the diagnosis, care, and treatment of such workers at these designated sites; and

(h) to identify federal funding sources to assist state and local governments in paying costs associated with disability benefits under [the World Trade Center disability law].

The chair of the Task Force is empowered to establish committees for the purpose of making special studies pursuant to the above-referenced duties and may appoint non-Task Force members to serve on each committee as resource persons, who shall be voting members of the committees to which they are appointed.

Summary

The World Trade Center disability law presumes that individuals who meet certain qualifying criteria and were involved in September 11th related operations in the line of duty may have incurred injuries or developed diseases that disabled them. The Task Force reported in its first annual report, dated June 1, 2007, that it was reviewing and examining evidence about adverse health effects and the need to compensate responders properly, that due to certain qualifying criteria, the majority of these individuals are or were members of the uniformed services, that there are severe health impacts suffered by responders, that the pension and disability systems may not be configured properly to deal with these aftereffects, that there may be a need for legislative amendments and that the Task Force will issue findings on at least an annual basis.

The Task Force met eleven times during the twelve month period following its June 1, 2007 report, to finalize an initial set of seven recommendations that were reported to the legislature and governor in an interim report, dated March 4, 2008. Those recommendations are republished once again in this annual report.

During the past year the chair established two committees to assist the Task Force. The first was a committee of doctors to further study and report on the health consequences of the collapse of the World Trade Center consisting of Task Force chair, Dr. Aldrich, and members, Drs. Prezant and Levin, as well as two psychiatric specialists who were not members of the Task Force, Drs. Katz and Sharma, each of whom were more fully identified in the report, entitled Health Consequences of the Collapse of the World Trade Center: A Report to the

New York State September 11th Workers' Protection Task Force. That report was attached as an appendix to the March 4, 2008, interim report.

The second committee established by the chair was the Workers' Compensation committee of experts to evaluate the severity of the problems regarding the functioning of the Workers' Compensation system for public employees who allege WTC-related injuries. The committee will report findings and conclusions and make recommendations to the Task Force regarding potential solutions to any problems identified. The committee consists of a representative of the Workers' Compensation Board, Mark Humowiecki, Special Counsel, a representative of the State Insurance Fund, Robert Sammons, a Workers' Compensation attorney, Dominic Tuminaro, and two physicians, James Melius, and Steven Markowitz.

Prior to establishing the Workers' Compensation committee, the Task Force received testimony on Workers' Compensation issues as they relate to those who participated in rescue, recovery and cleanup operations at the World Trade Center and other sites and, specifically, to public employees who participated in such operations. That testimony was provided on November 8, 2007, by Mindy Roller, of the New York City Law Department, Robert Sammons of the State Insurance Fund, and Elizabeth Lott of the Workers' Compensation Board.

The Task Force held four meetings during the three months of December to February, to discuss, draft and reach unanimous agreements on seven recommendations, which are set forth in the March 4, 2008, interim report and below.

The Task Force's final two meetings following the issuance of the March 4, 2008, interim report were held on April 17, 2008, and May 29, 2008, to discuss and review draft legislation to implement the Task Force's recommendations and the progress of the Workers' Compensation committee.

Recommendations

The Task Force's seven recommendations are as follows:

1. Pre-employment physicals:

The World Trade Center disability law includes the requirement that "a member must have successfully passed a physical examination for entry into public service which failed to disclose evidence of the qualifying condition or impairment of health that formed the basis for the disability." Many, probably most, of the non-uniformed workers at the World Trade Center (WTC) site had not been required to and had not undergone a pre-employment physical examination.

The Task Force recommends that the law should be amended as regards the requirement for a pre-employment physical. Currently, pension fund medical boards are empowered to obtain all relevant medical records of claimants. In the case of those claimants who have not had pre-employment physicals, the requirement of a pre-employment physical should be eliminated. Instead, their pre-9/11 medical records should be used to judge the existence and/or extent of any pre-existing illness. If no such records are available, it should be presumed that the illness is WTC-related if the illness is listed in the statute as a condition associated with 9/11-related rescue and recovery work.

2. The forty hour rule:

The World Trade Center disability law currently specifies that eligibility for the presumption WTC-related disability includes the requirement that the claimant “participated in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours.” The statute provides an exception to the forty hour requirement for members who were unable to meet the forty hour requirement due to certain documented physical injuries sustained between September 11 and 12, 2001, at the site while participating in rescue, recovery or cleanup operations.

The scientific evidence is that there was a substantial risk of developing respiratory, gastrointestinal, and/or mental health disability for those WTC rescue, recovery, and cleanup workers who were exposed for any period of time to conditions at the site during the first 48 hours after the first aircraft hit the World Trade Center towers, not just for those who participated for a minimum of forty hours.

Overall, such risks depend on poorly understood susceptibility factors and the dose of exposure to WTC dust and/or to psychologically disturbing events and experiences. The exposure dose in turn depends on a number of measurable and unmeasurable factors. For dust exposure, such factors include: density of the dust cloud at the specific time and space where the worker was deployed, level of respiratory effort, level of respiratory protection used, etc. Since there were major changes over time in the density of the dust cloud, a single standard of 40 hours of exposure without regard to the time at which that exposure took place is inappropriate. For mental health risk, the magnitude of exposure is more difficult to assess, but here too there was a gradient in “exposure”, with maximum exposure in the first few hours after the first aircraft hit the towers.

While recognizing that shorter duration exposure resulted in disability for some workers, the Task Force believes that forty hours remains a reasonable benchmark, identifying workers with major exposure, but that the unprecedented high density of the WTC dust (and of psychological stress) that was present

during the 1st two days should be recognized as likely to be pathogenic in a much shorter period of time.

The Task Force recommends that the WTC disability law should be amended to add another exception to the forty hour requirement, extending the presumption to those who participated in World Trade Center rescue, recovery or cleanup operations for any period of time during the first 48 hours after the first aircraft hit the towers.

Beyond that, the statutes governing pension benefits should continue to recognize that the absence of the WTC injury presumption does not prove the absence of disability. The law should make clear that persons with evidence of a new disability (onset of a new illness or aggravation of a pre-existing condition) after significant WTC exposure, even short of forty total hours or after the first 48 hours, may still be judged by a pension fund medical board to have developed a physical or mental health disability as a result of WTC exposure.

3. Criteria for reviewing disability applications:

At present, the criteria that pension fund medical boards use to evaluate World Trade Center pension applications are not clearly spelled out, and may not be consistently applied. Medical determinations should be fair and transparent.

The Task Force encourages each medical board to evaluate its process, and, where appropriate, develop any necessary guidelines based on expert medical advice. The City will provide the Task Force with updates of such evaluations and outcomes at each of its meetings, and the Task Force will determine if specific additional recommendations are necessary.

4. Lack of coverage for persons who terminated public employment with vested retirement rights or on non-WTC-related disability:

The WTC disability law provides a rebuttable presumption of entitlement to a person who files an application for an accidental disability retirement benefit while still in service or within certain time periods after terminating public employment. However, there is no provision in the statutes that enables a person who participated in the World Trade Center rescue, recovery, or cleanup operations and subsequently terminated public employment with vested retirement rights or who retired on an accident disability to apply for a disability retirement benefit in accordance with the provisions set forth by these statutes.

The Worker Protection Task Force recommends that the statute be amended to allow “vestees” who meet the other criteria of the law to be eligible to apply for a disability retirement subsequent to their separation from service, but prior to their retirement.

The Task Force also recommends that the New York City Administrative Code be amended via State law to allow members who retired on an either an accident disability or an ordinary disability to apply for reclassification in accordance with the provisions set forth by these statutes at any time subsequent to their separation from service.

5. Coverage for state and county correction officers and deputy sheriffs outside the City of New York:

RSSL section 507-c provides a three-quarter final average salary, performance of duty disability retirement benefit to uniformed personnel in institutions under the jurisdiction of the New York City Department of Corrections. Chapter 445 of the Laws of 2006 amended section 507-c to provide these City employees who participated in World Trade Center rescue, recovery and cleanup operations with the World Trade Center disability presumption. However, the corresponding Retirement and Social Security Law sections that provide the same performance of duty disability retirement benefit to state and county corrections officers were not amended. Accordingly, a state corrections officer who participated in the rescue, recovery and cleanup operations does not qualify for the presumption, while an identically situated city corrections officer would qualify. Similarly, a deputy sheriff employed by the City of New York is covered by the presumption, while a county deputy sheriff is not.

The Task Force recommends that the Retirement and Social Security Law be amended to provide the World Trade Center disability presumption to state and county corrections officers and deputy sheriffs who participated in World Trade Center rescue, recovery and cleanup operations and meet the other criteria of the law.

6. Geographical boundaries:

The World Trade Center disability law currently specifies that eligibility for the presumption of World Trade Center (WTC) related disability includes the requirement that the claimant worked at one of the following sites: the “World Trade Center site,” defined as “anywhere below a line starting from the Hudson River and Canal Street, east on Canal Street to Pike Street, south on Pike Street to the East River, and extending to the lower tip of Manhattan”; the Fresh Kills landfill; the barges traveling to and from the Fresh Kills landfill; the City Morgue; or the temporary morgue.

As noted above, the scientific evidence is that the risk of developing WTC-related disease depends in part on the dose of exposure to WTC dust and/or to psychologically disturbing events and experiences. The geographical boundaries and locations specified above may be reasonable (if rough) indicators of substantial exposure (taken together with relevant time periods). However, a few

additional locales and circumstances have been identified at which significant dust exposure occurred, (e.g., Fire Department garages where heavily contaminated vehicles were cleaned and repaired; similar cleaning operations at NYPD and NYC vehicle garages; or significantly higher-than background levels of psychological stress were operative (e.g., Emergency Fire, Medical, or Police dispatchers who handled calls from desperate people caught in the towers and their severely distressed family members). Workers in those areas were exposed to some of the same toxic materials and/or psychological stresses as were workers at the WTC site, even if not to the extreme levels that were experienced by workers present at the WTC site during the attacks or collapses or immediately after the collapses.

Dust exposure: The Task Force recommends that those workers serving as Emergency Vehicle Radio repair mechanics at the worksites that are currently covered by the statute as amended, who otherwise meet the requirements of the WTC disability law, should be included for the presumption of WTC-causation of disability, for the medical conditions listed in the statutes.

Psychological stress: The Task Force also recommends that those workers serving in a call-taker or dispatcher or dispatch supervisory capacity in the job titles and the worksites listed below at any period of time within the first 24 hours after the first aircraft hit the towers should be included for the presumption of WTC-causation of disability only for psychological conditions listed in the statute.

Worksites:

Police Department:

- 11 Metrotech Center - Bklyn,
- 1 Police Plaza - Manhattan,

Fire Department:

- 35 Empire Blvd-Bklyn,
- 79th Street Transverse-Manhattan,
- 83-98 Woodhaven Blvd-Queens,
- 1129 East 180 Street-Bronx,
- 65 Slosson Avenue-SI,
- 9 Metrotech Center-Bklyn,
- 25 Rockaway Avenue (FCU)-Bklyn.

FDNY – Emergency Medical Service:

- 1 Metrotech Center-Bklyn,
- 9 Metrotech Center-Bklyn,
- 55-30 58 Street-Maspeth Queens.

Civil Service Titles by Agency:

Police Department:

Police Communication Technician (PCT),
Supervisor Police Communication Technician (SPCT),
Principal Police Communication Technician I,
Principal Police Communication Technician II,
Principal Police Communication Technician III,
Administrative Manager – Communications.
Police Administrative Aide title series

Fire Department:

Fire Alarm Dispatchers (FAD),
Supervising Fire Alarm Dispatchers I (SFAD I)
Supervising Fire Alarm Dispatchers II (Borough Supervisor),
Deputy Director & Director Fire Dispatch Operations,
Assistant Commissioner for Communications.

FDNY – Emergency Medical Service:

Emergency Medical Specialist-Level I (EMT),
Emergency Medical Specialist Level II-(Paramedic),
Supervising Emergency Medical Specialist Level I (LT),
Supervising Emergency Medical Specialist Level II (Capt),
Deputy Chief EMS Communications,
Division Commander EMS Communications.

7. Time-limited Workers' Compensation claims:

To be eligible for workers' compensation benefits, a worker must notify the employer (agency) within 30 days of the date of the accident and must file a claim with the New York State Workers' Compensation Board ("the Board") within two years. Workers must file within 2 years of the date at which they became "disabled", as determined by the Worker's' Compensation Board. Effective August 16, 2006, the Workers' Compensation Law was amended to deem late-onset medical conditions caused by 9-11 exposure to be occupational diseases instead of accidents, thus liberalizing the time limitations applicable to such claims. Because the potential "date or disablement" in any given claim may fall more than 2 years before the date on which the claim is filed, this has resulted in a significant rate of controversy in workers' compensation claims. Furthermore, workers who became disabled between 9/11/03 and 8/16/04 received no benefit from the 2006 amendment, because they were unable to file an "accident" claim within 2 years of 9/12/01 and were unable to file a timely "occupational disease" claim after Article 8-A was enacted on 8/16/04, because two years had already passed.

The Task Force recommends that Article 8-A be amended to ensure that workers who became disabled between 9/11/03 and 8/13/08 (the current

registration deadline) be provided an additional period of time to file for Workers' Compensation during which their claims will be deemed to be timely.
