Firefighters - public safety officers - cancer benefits

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Subject:
Firefighters - public safety officers - cancer benefits

June 5, 2020

Lonnie N. Groot
City of Attorney, City of Daytona Beach Shores
300 International Parkway, Suite 100
Lake Mary, Florida 32746

Dear Mr. Groot:

On behalf of the City Council of the City of Daytona Beach Shores, you have asked Attorney General Ashley Moody for an opinion on the following question:

> Are the City's Public Safety Officers, who serve both as firefighters and law-enforcement officers, eligible for the benefits provided in section 112.1816, Florida Statutes?

In sum:

> The City's Public Safety Officers whose primary responsibilities are law enforcement rather than firefighting are not eligible for benefits provided to firefighters under section 112.1816, Florida Statutes.

The City of Daytona Shores employs Public Safety Officers who serve as both firefighters and law enforcement officers. The City has a Public Safety Department but not a Police Department or a Fire Department. You state that their law enforcement function is "predominant." The Public Safety Officers do not serve as full-time firefighters and their primary responsibilities are not the prevention and extinguishing of fires. Some of the Public Safety Officers are not yet certified as law enforcement officers and are working full-time as firefighters until such certification. Effective July 1, 2019, the Legislature enacted section 112.1816, which makes firefighters diagnosed with certain cancers eligible to receive disability or death benefits in lieu of pursuing workers' compensation coverage. Chapter 2019-21, Laws of Fla. (2019). Section 112.1816(1)(c) defines "firefighter" as:

> an individual employed as a full-time firefighter within the fire department or public safety department of an employer whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.

Terms in a statute that are not defined therein must be given their plain and ordinary meaning. *See Nehme v. Smithkline Beecham Clinical Laboratories*, 863 So. 2d 201, 204 (Fla. 2003).

The statutory definition as drafted sets forth a two-part test. The employee must: (1) be "employed as a full-time firefighter"; and (2) be employed "within the fire department or public safety department of an employer whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires." The first part of the test looks at the employee's duties. The second part of the test looks at the employer's primary responsibilities. A primary purpose of the City's Public Safety Department is firefighting and prevention. Thus, the employing agency appears to meet the second part of the test.

Public Safety Officers whose full-time duties are firefighting, fire safety, and fire code enforcement would satisfy the definition in section 112.1816(1)(c). If, however, the duties of public safety officers are law enforcement, and their firefighting duties are not full-time, by using the term "full-time firefighter", the legislature appears to have excluded those employees from coverage under section 112.1816. The factual determination of a Public Safety Officer's full-time, primary responsibilities must be made by the employing agency.

The definition in section 112.1816(1)(c) does not affect the benefits available to firefighters under sections 112.18, Florida Statutes (conditions caused by tuberculosis, heart disease, or hypertension suffered in the line of duty), 112.18, Florida Statutes (conditions caused by hepatitis, meningococcal meningitis, or tuberculosis suffered in the line of duty), or 112.1815, Florida Statutes (diseases arising out of employment as a first responder).

I hope this opinion is helpful to the City Council.

Sincerely,

Ashley Moody
Attorney General