

G.L. c.41, §111F (Injured on Duty Benefits) Frequently Asked Questions

Members of the KP Law Labor and Employment Practice Group frequently receive questions concerning the application of G.L. c.41, §111F. Common questions include the eligibility of police officers and firefighters for benefits, and the relationship of such benefits to those authorized or required by a collective bargaining agreement. Below, we have addressed some of the more common questions.

1. What are §111F benefits?

General Laws c.41 §111F provides for leave without loss of pay for a period of incapacity incurred by a police officer or firefighter because of injury sustained in the performance of the employee's duty without fault of the employee.

2. What if a third party is partly or fully responsible for the police officer or firefighter's injury?

If the injury was caused under circumstances creating a legal liability in some person to pay damages to the injured police officer or firefighter, the municipality employing the injured employee or the injured employee, may file an action in court to enforce the liability of the third person. Any damages paid may be recovered by the municipality paying the employee §111F benefits until such time as the full amount paid by the municipality is reimbursed. The injured police officer or firefighter may retain damages paid in excess of the §111F benefits paid by the municipality. In any such action, the municipality is responsible for its share of attorney's fees and expenses.

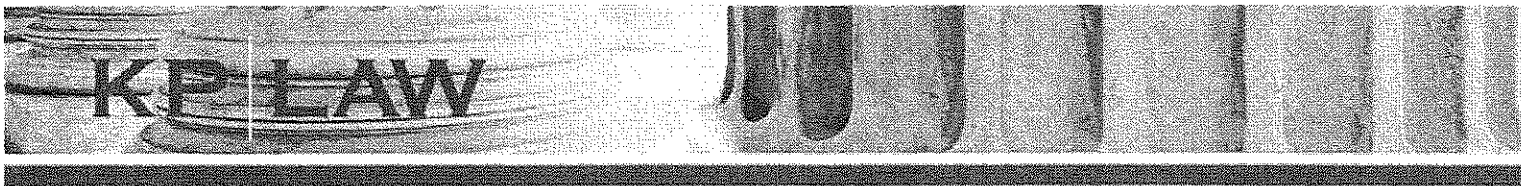
3. Does health insurance cover §111F benefits?

No. General Laws c.41 §100 provides that a municipality shall indemnify a police officer or firefighter for reasonable hospital, medical, surgical, chiropractic, nursing, pharmaceutical, prosthetic and related expenses and reasonable charges incurred as the natural and proximate result of an accident occurring or of undergoing a hazard peculiar to the officer or firefighter's employment while acting in the performance and within the scope of his duty without fault of the employee.

The 2016 Municipal Modernization Act added a new paragraph to §111F allowing a municipality to establish and appropriate amounts to a special injury leave indemnity fund for payment of §111F injury leave compensation or medical bills incurred by the injured employee. It also provides that any amounts received from insurance proceeds or restitution for injuries may be deposited into this fund. Previously, such a fund could only be created by special legislation.

THE LEADER IN PUBLIC SECTOR LAW

617.556.0007 | 1.800.548.3522 | www.k-plaw.com | ©2017 KP Law, P.C.



4. What is the difference between §111F benefits and workers' compensation benefits?

General Laws c.41, §111F benefits are available only to police officers and firefighters. Police officers and firefighters receiving such leave under §111F are entitled to 100% of their compensation on a tax free basis. These monies are paid by the employing municipality. There is no fixed statutory limit on the duration of §111F benefits, but the statute and case law provide that the benefits are payable until the employee retires or is pensioned (assuming the employee remains incapacitated for duty) or until such time a physician designated by the board or officer authorized to appoint police officers or firefighters in the city, town or district determines that such incapacity no longer exists. Politano v. Board of Selectmen, 12 Mass. App. Ct. 738 (1981). If an employee is terminated for reasons not causally connected or related to the incapacity and the resulting absence during the pendency of receipt of §111F benefits, however, the employee's right to receive benefits ends on the date of termination. Hennessey v. Bridgewater, 388 Mass. 219 (1983).

By contrast, in accordance with G.L. 152, all other employees are covered by workers' compensation. If eligible for workers compensation, such employees are entitled to sixty percent (60%) of their average weekly wage on a tax free basis. Instead of being paid by the municipality, workers' compensation benefits are paid by an insurer. Employers are required by law, G.L. c. 152 §25A, to maintain workers' compensation insurance. Benefits for total incapacity are payable for a period of up to three (3) years.

5. Can municipalities, pursuant G.L. c.40, §111F, designate a doctor to determine whether an employee injury is work-related?

Yes. The statute expressly permits the municipality to designate a physician to determine whether incapacity exists. This physician may also make a determination as to whether the employee was injured in the performance of their duties without fault of the employee.

6. Can municipalities, pursuant to G.L. c.41, §11F, designate a psychologist or social worker for the purposes of determining whether a mental or emotional condition is work-related?

The statute specifically states that a municipality may designate a "physician" for this purpose, but does not define the term. Accordingly, we recommend that a municipality select a health care professional with an M.D. degree, such as a psychiatrist. Although we are aware that some municipalities have elected to use a non-physician for this type of evaluation, the opinion of such an individual may not be sufficient to prove a disqualification under §111F if challenged. Similarly, a disability retirement application, whether voluntary or involuntary, will not be processed by most retirement boards without the opinion of a health care professional with an M.D. degree, such as a psychiatrist.

7. Can a CBA provide different benefits than §111F?

Yes. In Town of Duxbury v. Duxbury Permanent Firefighters Ass'n, 50 Mass. App. Ct. 461 (2000), the court, citing G.L. c. 150E §7(d)(e), concluded that where a conflict exists between §111F and more lenient provisions of a collective bargaining agreement, the provisions of the collective bargaining agreement control.

THE LEADER IN PUBLIC SECTOR LAW

617.556.0007 | 1.800.548.3522 | www.k-plaw.com | ©2017 KP Law, P.C.

Similarly, in Rein v. Marshfield, 16 Mass. App. Ct. 519 (1979), the Massachusetts Appeals Court held that a collective bargaining agreement between public employers and employees may provide benefits in excess of those provided under G.L. c.40, §111F. In that case, the court held that an officer on injury leave who drew pay under §111F did not accrue sick or vacation pay during the period he was off active duty, while acknowledging that a collective bargaining agreement could have provided otherwise.

Therefore, it is important that municipalities carefully consider any provisions that may provide for benefits greater than those allowed under 111F.

8. Do the heart, lung, and cancer presumptions apply to injury leave claims under §111F?

No. The heart, lung and cancer presumptions found in G.L. c. 32, §§94, 94A, and 94B provide that impairment of health caused by hypertension or heart disease, disease of the lungs or respiratory tract, or cancer, resulting in disability or death will be presumed to have been suffered in the line of duty. The heart presumption applies to both police officers and firefighters, while the lung and cancer presumptions apply only to firefighters. However, in Vaughan v. Auditor of Watertown, 19 Mass. App. Ct. 244 (1985), the Massachusetts Appeals Court specifically held that the heart presumption did not apply to leave with pay of an injured police officer under §111F.

However, in Blair v. Board of Selectmen, 24 Mass. App. Ct. (1987), the Appeals Court clarified that nothing in the heart presumption statute suggests that §111F pay is unavailable to an officer if the officer can demonstrate that the work absence is attributable to a condition (in the case, hypertension) sustained in the performance of duty. In other words, while the heart, lung, and cancer presumptions do not automatically apply to claims for §111F benefits, an officer will still be eligible for such benefits if the officer can demonstrate that the condition is work-related. Note further that an employer is not precluded from agreeing with a union request to apply these presumptions to §111F claims pursuant to a collective bargaining agreement. Municipalities should also be aware that applying the presumptions to §111F claims can result in the creation of a “past practice” that will be binding on the municipality in future cases.

Please contact any member of the KP Law Labor and Employment Practice Group at 617.556.0007 with any further questions concerning G.L. c.40, §111F benefits or other employee benefit issues.

Disclaimer: This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship with KP Law, P.C. Whether to take any action based upon the information contained herein should be determined only after consultation with legal counsel.

THE LEADER IN PUBLIC SECTOR LAW

617.556.0007 | 1.800.548.3522 | www.k-plaw.com | ©2017 KP Law, P.C.