

THE TRUTH ABOUT Florida's Heart & Lung Statute

WHAT YOU SHOULD KNOW



MARTIN L. LEIBOWITZ, P.A.

LEGAL NOTICE

THIS BOOK IS NOT LEGAL ADVICE

This book contains valuable information concerning Florida's Heart & Lung Statute. It is important that you realize, however, that this book is provided solely for educational purposes, is specifically not legal advice, and will not establish an attorney-client relationship between Martin L. Leibowitz, P.A. and the reader. To establish an attorney client relationship, you must sign a retainer agreement which will establish the terms of our representation, including attorney's fees and costs.

This book has not been reviewed or approved by The Florida Bar. It is intended to provide information only and is not meant to determine whether you will qualify for benefits pursuant to Florida's Heart & Lung Statute.

By **continuing**, you acknowledge that this book does not contain legal advice, that no attorney-client relationship exists between you and Martin L. Leibowitz, P.A., that you have read and understand the above information, and you nevertheless wish to read "The Truth About Florida's Heart & Lung Statute".

THE TRUTH ABOUT Florida's Heart & Lung Statute

WHAT YOU SHOULD KNOW

Important Information:

The Presumptions, the Claims Process,
and Your Claim due to:

HEART DISEASE, HIGH BLOOD PRESSURE,
TUBERCULOSIS, HEPATITIS & MENINGITIS

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INTRODUCTION

Firefighters (including volunteer firefighters), Law Enforcement Offices (including volunteer law enforcement officers), Correctional Officers/Correctional Probation Officer, certified Emergency Medical Technicians and Paramedics (including volunteer EMT's and Paramedics), all of whom are collectively referred to as First Responders, have unique injuries and occupational diseases because of the nature, stress and physical demands of their professions. Many First Responders have developed heart disease and hypertension during the course of their careers. Others have contracted Hepatitis and Tuberculosis due to the assistance they have provided to citizens in need. Still others have suffered chronic back, knee and shoulder injuries. But more often than you might expect, their employers and workers' compensation insurance companies wrongfully deny their claims for work-related conditions.

Far too many First Responders are misinformed, or not informed at all, about the presumption contained within [§112.18](#) (commonly referred to as the Heart/Lung Statute), their legal right to workers' compensation benefits, the claims process, and the interaction between their workers' compensation claim and employment, pension and Social Security issues.

With over 28 years of experience in workers' compensation trial defense and as an Assistant State Attorney in Duval, Clay and Nassau Counties, Martin Leibowitz knows how insurance companies and employers think, and the defenses they will raise against your claim. His years with the State Attorney's Office have provided him with an understanding of the stress and injuries resulting from First Responders' duties.

Martin Leibowitz has experience litigating the complex medical-legal, compensability and causal relationship issues which routinely accompany First Responder cases, and will not hesitate to take your case to trial to secure your rightful workers' compensation benefits as he has done with other clients. His personal experience with multiple medical risk factors provides him with a level of understanding of these problems which cannot be found elsewhere.

Firefighters/Certified EMT's, Police Officers, and Correctional Officers will receive the personal attention that Martin L. Leibowitz's reputation was built on. Your discussions will include the burning of unnecessary sick time when you should rightfully be receiving lost time under the Workers' Compensation Act, the reimbursement of hospital and doctor bills paid under your Group Insurance Policy instead of through Workers' Compensation, the notice requirements and time limitations for notifying your employer and filing your claim under the Heart/Lung Statute, and whether you have suffered a disability that meets the requirements of **the Presumption** found within the Heart/Lung Statute for the purpose of filing a claim.

This informative book is based on Mr. Leibowitz's extensive experience in handling First Responders claims. At the Law Firm of Martin L. Leibowitz, P.A., we understand that making the decision to sue for workers' compensation benefits is difficult. There are many unanswered questions and hidden traps surrounding the filing of your claim. How do you prepare for this? Make sure you understand your rights before you file your claim and before you stop working. By ordering this book, you've taken your first step in the right direction toward securing the benefits to which you are entitled.

The next step is to call Martin L. Leibowitz for Jacksonville and surrounding county cases at (904) 384-8878, or visit our website at www.LeibowitzLawFirm.com. Schedule your free **First Responder Rights Analysis**, where you will be guided through this complex legal and insurance process. This one-on-one meeting is free, and without obligation. Here you will gain the knowledge and assistance you need to secure the benefits you are due.

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What is a Presumption?

“A legal inference or assumption that a fact exists, based on the known or proven existence of some other fact or group of facts. Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption.” Black’s Law Dictionary, (8th ed. 2004).

Normally under the Florida Workers’ Compensation Law, there is no presumption in favor of an employee attempting to establish that he/she suffered an accident or occupational disease at work. Instead, the employee is required to prove that his/her accident or occupational disease arose out of the employment and in the course of employment to be eligible for medical and lost wages benefits, which is no easy task.

What is THE PRESUMPTION?

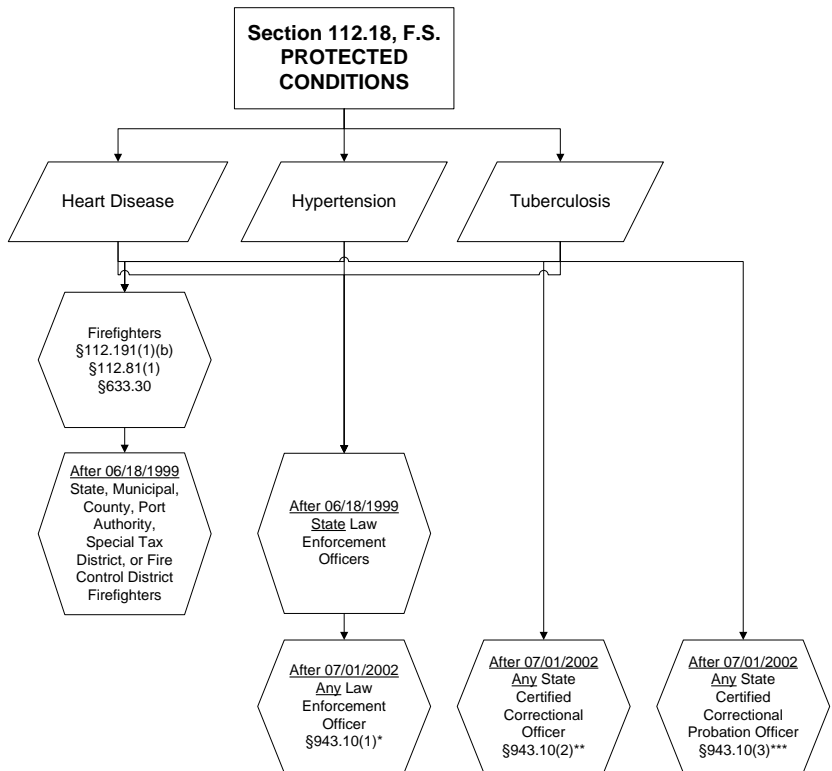
As a type of “thank-you” to Florida’s First Responders, the Florida Legislature has enacted three presumption laws which make it easier for a First Responder to prove the relationship between certain occupational diseases and their employment. By virtue of these presumptions, certain specific occupational diseases are presumed related to a First Responder’s employment if certain facts exist.

What are the Three Presumptions?

1. **§112.18, Florida Statutes**, which became law in the 1960’s, provides that:
 - a. **Heart Disease, High Blood Pressure (Hypertension) and Tuberculosis** are **presumed** accidental and suffered in the line of duty;
 - b. If the firefighter, law enforcement officer, or (after October 1, 2007) correctional officer/correctional probation officer successfully passed a physical examination upon entering into service with the employing agency which failed to reveal any

- c. evidence of these conditions; and
The condition results in disability;
- d. Unless the contrary be shown by competent evidence.

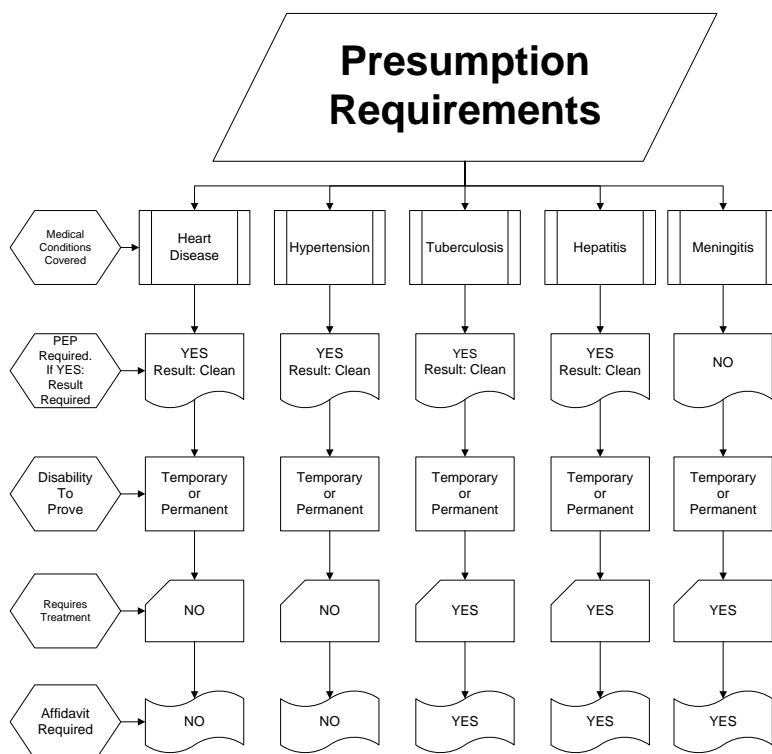
EFFECTIVE DATES OF PRESUMPTION COVERAGE BY CONDITION & CLASS



2. **§112.181**, Florida Statutes, became law on June 15, 1995, and became effective and applied to diagnosed conditions on or after January 1, 1996. It was subsequently amended and provides that:

- a. Any firefighter, paramedic, emergency medical technician (EMT), law enforcement officer, or correctional officer in the course of his/her employment;
- b. Who suffers a condition or impairment of health that is caused by:
 - **Hepatitis,**
 - **Meningococcal Meningitis,** or
 - **Tuberculosis;**
- c. That requires medical treatment, and
- d. That results in total or partial disability or death;
- e. That files a specific Affidavit verifying certain required information by written declaration;
- f. That, prior to diagnosis, has undergone standard, medically acceptable tests for evidence of the communicable disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests failed to indicate the presence of infection (except in the case of Meningococcal Meningitis);
- g. Shall be **presumed** to have a disability suffered in the line of duty;
- h. Unless the contrary be shown by competent evidence.

NOTE: On or after June 15, 1995, an emergency rescue or public safety worker may be required to undergo a pre-employment physical examination which tests for, and must fail to reveal, any evidence of Hepatitis or Tuberculosis.



Affidavit for Meningococcal Meningitis Must State

- In the 10 days immediately preceding diagnosis he or she was not exposed, outside the scope of his or her employment, to any person known to have Meningococcal Meningitis or known to be an asymptomatic carrier of the disease.

Affidavit for Tuberculosis Must State

- In the period of time since the worker's last negative Tuberculosis skin test, he or she has not been exposed, outside the scope of his or her employment, to any person known by him or her to have Tuberculosis.

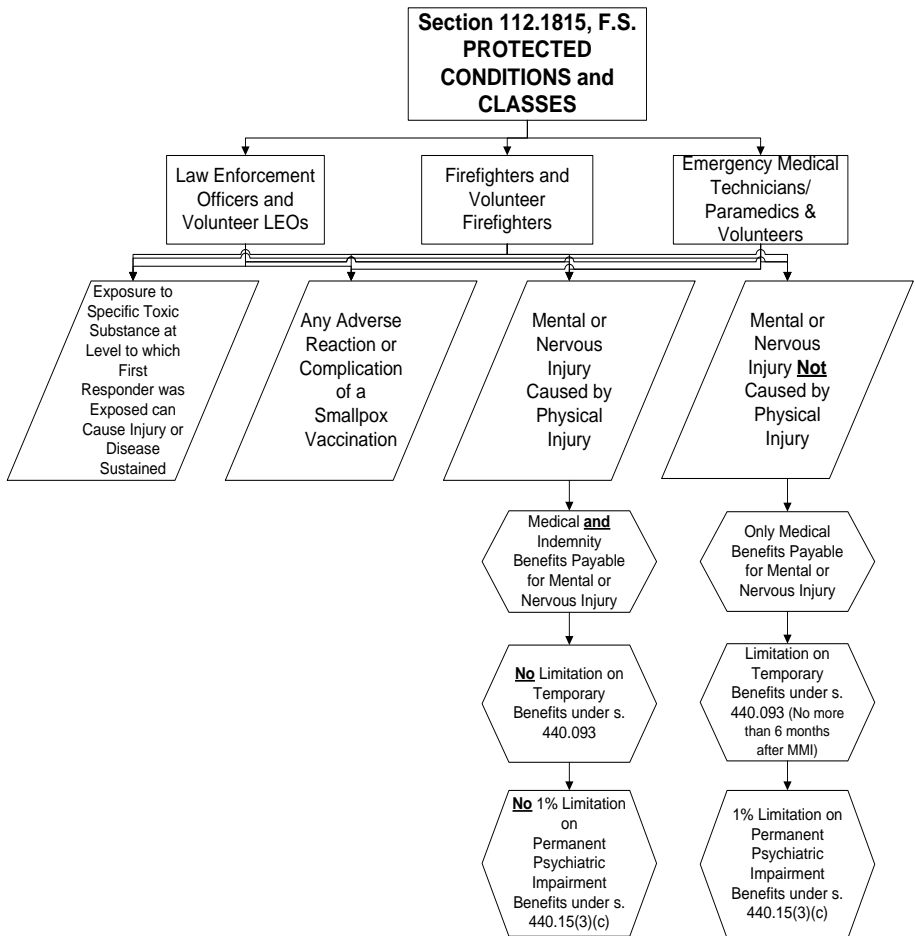
3. **§112.1815, Florida Statutes**, became law and was effective on June 8, 2007. It applies to firefighters (including volunteer firefighters), law enforcement officers (including volunteer law

enforcement officers), and emergency medical technicians including volunteers (including volunteer EMT's and paramedics) employed by state or local government. It provided that:

- a. An injury or disease caused by the exposure to a toxic substance is not an injury by accident arising out of employment unless there is a preponderance of the evidence establishing that exposure to the specific substance involved, at the levels to which the first responder was exposed, can cause the injury or disease sustained by the employee;
- b. Any adverse result or complication caused by a **smallpox vaccination** of a first responder is deemed (**presumed**) to be an injury by accident arising out of work performed in the course and scope of employment;

4. The Florida Legislature also acknowledged the extreme stress endured by its First Responders by including in **Section 112.1815, Florida Statutes**, enhanced medical and lost wage benefits for the following situations:

- a. For a mental or nervous injury occurring as a result of a physical injury, payment of lost wages may be made. Temporary total and temporary partial disability benefits are neither limited to payment for only 6 months after the date of maximum medical improvement for physical injuries (as they are for non-First Responder employees), nor is the usual 1% limitation on permanent psychiatric Impairment Benefits applicable;
- b. For a mental or nervous injury unaccompanied by a physical injury, only medical benefits under Section 440.13, F.S., are payable for the mental or nervous injury. Lost wages may not be paid;



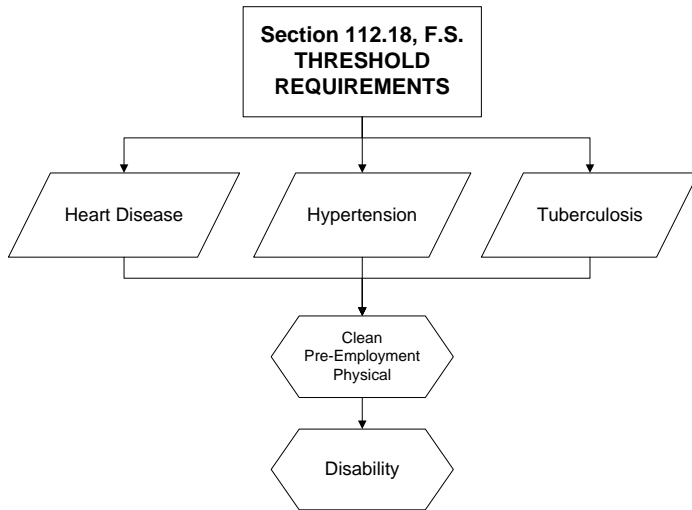
5. In those circumstances where First Responders have been found permanently and totally disabled, in **Section 112.1815(3), Florida Statutes**, the Florida Legislature has further ensured their need for fair and sufficient cost of living increases under the following circumstance:

- a. Permanent total supplemental benefits received by a First Responder whose employer does not participate in the Social Security program shall not terminate after the First Responder attains the age of 62 (as they are for other injured workers' under Florida Law).

These annual cost of living increase benefits continue for the duration of the First Responder's lifetime;

What are the four (4) prerequisites which must be established before you can benefit from the Heart/Lung Statute presumptions?

1. Protected Employees:
 - You must be a member of a “protected class” to claim the benefit of a presumption, e.g., Firefighter, Law Enforcement Officer, and Correctional Officer.
2. Protected Physical Condition or Disease:
 - You must have one of the protected occupational diseases, e.g., Heart Disease, High Blood Pressure, Tuberculosis, Hepatitis, & Meningitis.
3. The Protected Occupational Disease must result in partial or permanent disability or death:
 - You must have been incapacitated and incapable of performing your work and earning wages (use of accumulated sick leave during this time is allowed).
4. Pre-employment physical or pre-diagnosis testing requirement:
 - You must satisfy the particular statutes' (above) pre-employment physical or pre-diagnosis testing requirements, including no pre-employment evidence of the condition in question.



§943.10, F.S. Definitions; ss. 943.085-943.255.--The following words and phrases as used in ss. 943.085-943.255 are defined as follows:

*(1) "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

** (2) "Correctional officer" means any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care,

custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

*****(3)** "Correctional probation officer" means a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.

There are multiple definitions of “firefighter” within the Florida Statutes:

§112.191, F.S. Firefighters; death benefits.--

(1) Whenever used in this act:

(b) The term "firefighter" means any full-time duly employed uniformed firefighter employed by an employer, whose primary duty is the prevention and extinguishing of fires, the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, who is certified pursuant to s. [633.35](#), and who is a member of a duly constituted fire department of such employer or who is a volunteer firefighter.

§112.81, F.S. Definitions.--As used in this part:

(1) "Firefighter" means any person who is certified in compliance with s. [633.35](#) and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and

extinguishment 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.

§633.30, F.S. Standards for firefighting; definitions.--As used in this chapter, the term:

(1) "Firefighter" means any person initially employed as a full-time professional firefighter by any employing agency, as defined herein, whose primary responsibility is the prevention and extinguishment of fires, the protection and saving of life and property, and the enforcement of municipal, county, and state fire prevention codes, as well as of any law pertaining to the prevention and control of fires.

HOW DO I START THE CLAIMS PROCESS?

If you suffer from one of the protected conditions, you should immediately notify your supervisor and ask that a First Report of Injury or Illness be completed by your employer. Do not assume that your supervisor will automatically prepare this written notice of your injury because he/she heard about your condition through the office grapevine. If you have been diagnosed with high blood pressure, heart disease, Tuberculosis, or some other occupational disease, Section 440.151 of the Florida Statutes allows you only 90 days from the date of the injury to give your employer notice of your accident. Failure to do so will cause you real problems, possibly including the denial of your claim!

Martin Leibowitz took a case to trial on this very issue. His client, a correctional probation officer, was diagnosed in 2000 with heart disease and underwent coronary artery bypass graft (CABG) surgery. As a result of his diagnosis, he took time off from work under the Family Medical Leave Act. There was no question in his mind that the employer knew all about his medical condition. This was especially true when his symptoms returned in 2002 and it became necessary for him to undergo a stent placement procedure. In 2002, he was still not a member of the "protected class" (at that time, firefighters and state law enforcement officers only), but it was necessary for him to take off more time from work. His supervisor

and other superiors were aware of this most recent heart disease condition.

By 2006, Mr. Leibowitz's client (a correctional probation officer) was included in the protected class (effective July 1, 2002) as a result of the Florida Legislature's amendment of Section 112.18, Florida Statutes. When he learned that he was either going to undergo another CABG surgery or another stent placement surgery, he still did not know of his entitlement to coverage under the Florida Workers' Compensation Act. He told his supervisor of his impending surgery both before and afterward, took sick leave for two days while out for surgery and recovery, and scheduled himself off work on the weekend with his supervisor's approval. No employer representative ever asked him to file a First Report of Injury or Illness. Filing of this document, however, is required by Florida Statutes.

A year later, he learned that he was entitled to Florida Workers' Compensation benefits based on the Florida statutory presumption that his heart disease condition was related to his employment, due to his clean pre-employment physical examination and his disability on the day of, and three days following, his surgery. A petition for benefits was filed on his behalf and his employer, the State of Florida, Department of Corrections, denied his entitlement to benefits. This denial was based on his not having given notice to the employer of his heart disease, and his not having suffered any disability as a result of his heart disease.

Mr. Leibowitz took the case to trial where it was proven to the Judge of Compensation Claims' satisfaction that the Claimant's supervisor was notified by the Claimant of his heart disease both before and after his 2006 stent placement surgery. The Judge also concluded that the four days the Claimant was incapacitated and unable to work was sufficient to entitle him to medical and lost wages benefits under the Florida Workers' Compensation Act.

So remember that you must notify your employer because your First Report of an Injury or Illness begins the claims process, and can end it if you aren't careful.

HOW DO I ESTABLISH DISABILITY?

Disability is defined in Sections 440.151(3) & 440.02(13), Florida

Statutes, as the “incapacity because of the injury to earn in the same or any other employment the wages which the employee was receiving at the time of the injury”.

In other words, if you are incapacitated or unable to earn wages because of your medical condition, regardless of whether you have received full wages or sick pay during the period of your incapacitation, you've suffered a disability. This lost time must be the result of a doctor's instructions – your disability cannot be based on your decision alone. Diagnostic procedures and office visits alone likewise may be insufficient to establish disability.

WHAT SHOULD I EXPECT WHEN DEALING WITH MY EMPLOYER?

Your employer will often appear sympathetic to your situation. Do not mistake this for acceptance of your claim. Make sure your supervisor passes on all documentation you provide from your physician(s) to your direct supervisor or another designated individual. Keep a copy for your records.

WHAT SHOULD I EXPECT WHEN DEALING WITH THE INSURANCE COMPANY?

Since 2002, when the Florida Legislature extended the presumptions to include all law-enforcement officers, correctional officers, and correctional probation officers, municipalities and their insurance companies have significantly increased the number of cases they deny. They raise multiple, and sometimes frivolous, defenses in ever increasing attempts to reduce the amount of money they must pay for valid First Responder claims. Many First Responders simply give up and the statute of limitations expires on their otherwise valid claims.

For these reasons, it is important that you speak with us before it's too late. You will have many decisions to make depending on who your employer is. If you are employed with a municipality or a governmental entity within the state retirement system, you'll have to make decisions about your pension -- the kind of pension you apply for, when you apply for it, what evidence you need to submit, and how to handle an appeal of your denial. You will also have to deal with similar issues regarding Social Security disability benefits,

which may impact your workers' compensation case and pension. The sooner you consult with us about these important decisions, the better.

Many First Responders mistakenly believe that the Presumptions will provide them with a ticket to workers' compensation benefits. This is simply not the case. We assure you that your employer and their insurance company will have an attorney to defend against your claim from the very beginning, and likely before you even file your claim. Shouldn't you be equally prepared?

WHEN CAN I EXPECT A DECISION ON MY CLAIM?

Section 440.20(4), Florida Statutes, provides that the insurance company must investigate the claim. They can pay for your medical benefits and lost wages while they investigate your claim for a period of 120 days from the date they begin paying you lost wages or paying for your medical care, or they can deny your claim within 14 days.

Many times, the insurance company will simply do nothing while they investigate. Their investigation usually includes collecting all of your past medical records that they can locate, including those in the possession of your personal family physician. The insurance company will also review your personnel file. They may ask you to undergo a medical examination. If they do so, we recommend you call us immediately to protect your rights during that examination.

WILL MY EMPLOYER AND INSURANCE COMPANY TRY TO DENY MY CLAIM?

Probably. Your employer and their insurance company will closely examine the facts of your case to determine whether you fall within a protected class, have a protected condition, and have undergone a pre-employment physical examination. They will determine their opinion of your "disability" status, and whether you have submitted any statutorily required affidavit. If they conclude that your evidence does not meet these requirements, they will deny your claim.

WHAT IF I HAVE TO GO BEFORE A JUDGE OF COMPENSATION CLAIMS?

After you file the Petition For Benefits, you can expect that your employer's attorney will take your deposition. You will be asked many personal questions, including questions about your prior and current medical treatment, your employment, lost time from work, who you notified at work about your injury, and your pre-employment physical examination.

You can expect the insurance company to require that you go to a physician of their choosing who will evaluate your condition. It may be in your best interest to obtain what is called an independent medical examination from a physician sympathetic to your case, the cost of which may be covered by your employer. Depositions of these doctors may have to be taken to prove your case, and will eventually be submitted to the Judge of Compensation Claims when appropriate.

And not just any doctor can offer expert opinion testimony. The only expert testimony admissible in workers' compensation cases, with some exceptions, is that of an authorized treating physician and an independent medical examiner. If your case has been totally denied by the employer and insurance company, this means that no doctor has been authorized to treat you. That leaves only an independent medical examiner, who should be an individual with widespread respect within the medical community.

Mr. Leibowitz has the knowledge and experience to select the best independent medical examiner for your case.

FREQUENTLY ENCOUNTERED ISSUES.

These include the insurance company's incorrect calculation of your average weekly wage by failing to include off-duty time, certain employer-provided fringe benefits, or other includable benefits in the calculation. This means that you've lost valuable benefits. We always check to make sure that your average weekly wage and compensation rate is correct, so you can rest assured that you will receive all the benefits to which you are entitled.

Many times, medical benefits have not been provided properly or you have secured medical treatment on your own before your case was accepted as compensable. We will help you get reimbursed for those out-of-pocket expenses, where appropriate.

ONCE MY CLAIM IS PROVEN, WHAT BENEFITS WILL I RECEIVE?

The workers' compensation law provides for payment of a percentage of lost wages as well as medical benefits, including payment of your authorized doctors, hospitalizations, surgeries, diagnostic testing, prescriptions, and mileage to your doctor and pharmacy.

If your authorized physician states that you are unable to work, you are entitled to be paid $66\frac{2}{3}\%$ of your average weekly wages calculated for the 13-week period prior to your accident date, up to the allowable statewide maximum compensation rate. If you are able to work on a limited basis, you are considered to be temporarily and partially disabled. You will then be entitled to a percentage of your earnings if they are below 80% of your average weekly wages. You are entitled to be paid these temporary benefits for a maximum of 104 weeks (2 years).

Once you have been released by your treating doctor as having reached maximum medical improvement (MMI), you may be entitled to permanent benefits, some of which are calculated based on the percentage of impairment your doctor assigns from 1% up to 99%. These Impairment Benefits are paid at the rate of 2 weeks per percentage of impairment for the first 10%, 3 weeks per percentage of impairment for the next 5% (11-15%), 4 weeks per percentage of impairment for the next 5% (16-20%), and 6 weeks per all additional percentages of impairment beyond 20% (20-99%). The resulting number of weeks is multiplied by 75% of your compensation rate. Therefore, assuming your compensation rate is the maximum for 2011, or \$782.00 per week, and your impairment rating is 40%, you would be entitled to 175 weeks of benefits at 75% of \$782.00 (\$586.50) per week, or a total benefit of **\$102,637.50**.

However, these impairment benefits will be reduced by 50% for each week you earn income equal to, or in excess of, your average weekly wage.

If you are permanently unable to return to any form of employment because of your injury, you may be entitled to permanent total disability benefits, which will be paid to you until you reach age 75. You'll also receive a yearly cost-of-living increase set at 3% to age 62. And if your employer does not participate in the Social Security

program, this cost of living increase will not terminate at age 62 [§112.1815(3), Florida Statutes].

WHY MARTIN LEIBOWITZ?

Mr. Leibowitz purposely maintains a small law firm, and accepts only a limited number of cases each year.

Why? Because at the Law Firm of Martin L. Leibowitz, P.A., we concentrate our efforts on properly assisting our clients in the claims process, thereby maximizing the opportunity for success – We do not pursue frivolous cases.

The Law Firm of Martin L. Leibowitz, P.A. represents many clients with valid claims. When we devote our time and resources to representing legitimately disabled people with good claims, we are able to do our best work.

We thank you for requesting our book. While we cannot offer a magic solution to your problems, we can offer you guidance, and we sincerely hope this book has helped you understand the claims process and your rights.

The next, and most important, step is to call Martin L. Leibowitz for Jacksonville and surrounding county cases at (904) 384-8878, or visit our website at www.LeibowitzLawFirm.com. Schedule your free **First Responder Rights Analysis**, where you will be guided through this complex legal and insurance process. This one-on-one meeting is free, and without obligation. Here you will gain the knowledge and assistance you need to secure the benefits you are due.