



James ‘Dustin’ Samples Act

Public Chapter 465

Report with Recommendations for Tennessee Municipalities

Steven Cross, MTAS Fire Management Consultant
Betsy Cunningham, MTAS Human Resource Consultant
Elisha Hodge, MTAS Legal Consultant
Donald Pannell, MTAS Fire Management Consultant
John Grubbs, MTAS Human Resource Consultant
Stephanie O’Hara, MTAS Legal Consultant
Peter Voss, MTAS Human Resource Consultant

August 2023



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

Table of Contents

Introduction	3
Summary	3
MTAS Recommendations.....	4
What is the James “Dustin” Samples Act?	5
Effective Date of Act	6
Definitions	6
Firefighter Eligibility Requirements	7
If a Firefighter Meets All the Eligibility Requirements, Is the Firefighter Automatically Covered?.....	7
If the Presumption Is Not Rebutted, Who Pays for the Benefits Provided Under the Workers’ Compensation Law?.....	8
How Long Are Firefighters Eligible?.....	8
Conclusion.....	8
Questions or Assistance.....	9
Additional Resources.....	10

Introduction

In collaboration with the Tennessee Fire Service Coalition and the Tennessee Professional Firefighters Association, the 113th Tennessee General Assembly passed HB0976/SB0856 on April 21, 2023. Governor Bill Lee signed the legislation on May 17th. Known as the “James ‘Dustin’ Samples Act” (Act), this legislation became effective on May 17, 2023, for purposes and promulgating rules and will become effective on January 1, 2024, for all other purposes. The legislation amends Tennessee Code Annotated (after this T.C.A.) Title 7, Chapter 51, Part 2, and Title 50, Chapter 6, Part 1. With the passage of the Act, Tennessee is one of at least twenty-five states in the United States that have enacted such legislation.

The Act was named for Captain James “Dustin” Samples, who worked with the Cleveland, Tennessee Fire Department. Captain Samples was known as a resolute fire service professional. Captain Samples suffered from post-traumatic stress disorder (PTSD) related to his more than 21 years of service as a fire service professional. Though Captain Samples lost his battle with PTSD in 2020, he never lost his passion for the fire service or fellow firefighters.

Dustin Samples’ wife, Jennifer Samples (Cleveland police officer), said, “The act honors my husband by helping firefighters cope with the same struggles he experienced. It sends a big message saying that, you know, the state, the politicians, the whole state in general, understands that the danger of firefighting is not just the physical dangers they face in the street of burns and stress that injures the body, but the toll is even heavier on the mind.” Jennifer Samples also said, “Well, on Dec. 11, 2020, his career did come to an end. And so did life as me and my children knew it,” “You see, PTSD doesn’t just affect the firefighter; it affects the whole family: moms and dads, brothers and sisters, spouses and kids. I have two beautiful little girls who now won’t get to attend their daddy-daughter dances or have him walk them down the aisle. No, PTSD stole that too.” (Chattanooga Times Free Press, 2022)

Summary

The Act was passed unanimously in the Tennessee State House of Representatives (95-0 vote) and the Tennessee State Senate (30-0 vote). The preamble to the Act recognizes that the fire service has expanded to more than fighting fires and includes “emergency medical response, incidents involving hazardous materials, vehicle extrication, mass casualty incidents, disaster relief, search and rescue, and active shooter incidents.” The General Assembly recognized that the incident of suicide has become an epidemic in the fire service and enacted the law to benefit fire departments, stating, “By providing firefighters with PTSD treatment, employers will realize financial savings by not

having to replace and retrain new firefighters.”

The Act establishes a rebuttable presumption that eligible firefighters that have been diagnosed with PTSD by a mental health provider because of responding to one or more incidents with at least one of the factors listed in the Act are presumed to have incurred PTSD in the line-of-duty, and such PTSD is compensable under the Workers’ Compensation Law compiled in Title 50, Chapter 6 of the Tennessee Code. The presumption is rebuttable if it is shown by a preponderance of the evidence that the cause of PTSD was non-service-connected risk factors or non-service-connected exposure.

The Tennessee Department of Labor and Workforce Development is authorized to promulgate rules to effectuate this Act. The Act also requires the Tennessee Department of Labor and Workforce Development to establish and administer a grant program to mitigate the costs to an employer of providing workers’ compensation for firefighters diagnosed with PTSD by a mental health professional. The Act repeals this grant process on December 31, 2028. It expressly authorizes the awarding of grants to employers or to the workers’ compensation benefits providers of employers who apply for a grant as long as the employing fire department provides mental health awareness training for its personnel that includes training on the following topics:

- Understanding the signs and symptoms of stress, depression, anxiety, psychological trauma, complex trauma, and addiction;
- Understanding, navigating, and reducing mental health stigma;
- Utilizing appropriate de-escalation strategies; and
- Managing stress, using self-care techniques, developing coping skills, and promoting resiliency.

The Tennessee State Fire Marshal’s Office must verify mental health awareness training compliance. Employers may use a training program developed by another entity that satisfies these requirements. For example, if MTAS develops this training, covered fire departments may use the training developed by MTAS for compliance with this requirement. A firefighter who receives mental health awareness training shall be granted continuing education credits for such training.

MTAS Recommendations

MTAS recommends that covered employers proactively educate their employees about the mental health provisions of the “James ‘Dustin’ Samples Act.” Municipal fire departments should consistently prioritize mental and

behavioral health education, awareness, and treatment in their organization.

Detailed information regarding the act can be found in [T.C.A. § 7-51-206](#).

Consistent, proactive mental and behavioral health care may go a long way toward preventing these disorders for municipal firefighters. One strategy to work towards preventing PTSD is to comply with the “Tennessee Public Safety Behavioral Health Act” codified at [T.C.A. § 8-50-119](#).

To be compliant with this law, employers must:

- Provide not less than ten (10) visits or sessions with a mental health service provider to treat PTSD through the employee’s health benefits or otherwise. Public safety employers may require a co-pay or co-insurance for these visits that are no more than co-pays or co-insurance for other health benefits offered by the employer;
- Promote the use of a mental health service provider and other behavioral health professionals to public safety employees;
- Establish, in conjunction with a mental health service provider, support programs to mitigate behavioral health issues within the public safety employee community; and
- Maintain and regularly provide public safety employees with, at least once per year, a list of mental health service providers qualified to provide trauma therapy.
- This law prohibits employers from retaliating against employees for seeking or utilizing mental health service providers or behavioral health programs. The law requires the mental health service provider providing services to public safety employees to “participate in training, within the jurisdiction in which the public safety employees work, that familiarizes the provider with the unique problems associated with each public safety profession lifestyle, including, but not limited to, critical incident response training, critical incident stress management, field exercises such as ride-a-longs and visits to fire and emergency medical services (EMS) stations, and similarly appropriate training.”

What is the James “Dustin” Samples Act?

The “James ‘Dustin’ Samples Act” is legislation that amends T.C.A. Title 7, Chapter 51, Part 2, and Title 50, Chapter 6. The Act provides that when an eligible firefighter is diagnosed with PTSD, the injury may be compensable under the workers’ compensation law.

The “James “Dustin” Samples Act” has similarities to the Barry Brady Act (T.C.A. 7-51-201) as both laws create rebuttable presumptions that a diagnosis is related to firefighting activity and is a compensable work-related injury. If it can be shown by a preponderance of the evidence that the firefighter’s PTSD was caused by non-service-connected risk factors or non-service-connected exposure, the presumption may be overcome by the employer.

This Act honors the life and legacy of Captain James “Dustin” Samples.

Effective Date of Act

The Act was passed on April 21, 2023. The Act became effective for promulgating rules on May 17, 2023, and will become effective on January 1, 2024, for all other purposes.

Definitions

As used in the Act or Amendments:

- Employer-means a municipality, county, metropolitan form of government, or other political subdivision of this state that employs firefighters;
- Fire department-
 - (A) A department of a municipality, county, or political subdivision, or an organization, agency, or entity that offers its services, for or without pay, for the purpose of suppressing fires, performing rescue services, or for other emergency response purposes; and
 - (B) Does not include law enforcement agencies, emergency medical agencies licensed by the Tennessee emergency medical services board, and rescue squads that do not provide fire protection;
- Firefighter-
 - (A) Means a regular or full-time, paid employee of the fire department of a municipality, county, municipal form of government, or other political subdivision of this state whose duties require the employee to actively engage in fire suppression, rescue services, or other emergency response tasks; and
 - (B) Includes employees whose previous duties required the employee to respond to and be actively engaged in fire suppression, rescue services, or other emergency response tasks;
- In the line of duty-means in the course of employment and the actual discharge of the duties of the position;
- Mental health professional-means an individual professionally licensed in

this state to diagnose and treat post-traumatic stress disorders;

- Minor-an individual who has not attained eighteen (18) years of age;
- Post-traumatic stress disorder-the same meaning as defined in the most recent publication of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association;
- Serious bodily injury-Bodily injury that involves:
 - (A) A substantial risk of death;
 - (B) Protracted unconsciousness;
 - (C) Extreme physical pain;
 - (D) Protracted or obvious disfigurement; or
 - (E) Protracted loss or substantial impairment of a bodily member, organ, or mental faculty.

Firefighter Eligibility Requirements

To be eligible for the PTSD presumption, a firefighter:

- Must be a regular or full-time, paid employee of the fire department of a municipality, county, municipal form of government, or other political subdivision of this state whose duties require the employee to actively engage in fire suppression, rescue services, or other emergency response tasks; and
- Includes employees whose previous duties required the employee to respond to and be actively engaged in fire suppression, rescue services, or other emergency response tasks;
- Must have been exposed to a minimum of one of the following factors:
 - Directly witnessing the death of a minor or treating the injury of a minor who subsequently died before or upon arrival at a hospital emergency department;
 - Directly witnessing an individual whose death involved a serious bodily injury of a nature that shocks the conscience;
 - Responding to an event where there was a victim with a serious bodily injury that shocks the conscience; or
 - Responding to an event where a responder, co-worker of a responder, or family member of a responder sustained a serious bodily injury or died.

If a Firefighter Meets All the Eligibility Requirements, Is the

Firefighter Automatically Covered?

Yes, but a workers' compensation claim related to the Act is rebuttable by a preponderance of the evidence. The employer can rebut a firefighter's claim by arguing that the firefighter suffers from PTSD due to "non-service-connected risk factors or non-service-connected exposure."

If the Presumption Is Not Rebutted, Who Pays for the Benefits Provided Under the Workers' Compensation Law?

The Act requires the Department of Labor and Workforce Development/Bureau of Worker's Compensation to establish and administer a grant program to mitigate the costs to an employer of providing workers' compensation for firefighters diagnosed with PTSD by a mental health professional. However, an employer must apply for the grants and meet specific criteria to obtain a grant. In those circumstances where a grant is not obtained, and the employer cannot rebut the presumption, the employer will be solely responsible for the cost of providing services and benefits when the employer has opted to be subject to the Workers' Compensation Law compiled in Title 50, Chapter 6 of the Tennessee Code.

How Long Are Firefighters Eligible?

The Act extends applicability to a firefighter diagnosed with PTSD within one (1) year of their final date of employment with their fire department.

Conclusion

Firefighters provide vital public safety services to the public at large. The job brings many significant inherent hazards that can cause serious physical and emotional injuries, including death. The James "Dustin" Samples Act establishes a legal rebuttable presumption that firefighters who acquire PTSD did so due to their work as a firefighter. As such, the injury may be covered by workers' compensation. To mitigate the costs of the benefits and services provided to eligible employees diagnosed with PTSD and protect the mental health and well-being of all those in the fire service, employers must hold mental and behavioral health as a top priority by routinely promoting mental and behavioral health training and initiatives in the workplace.

Questions or Assistance

Please contact the following MTAS staff for questions or assistance.

- Melissa Ashburn, UT MTAS
Legal Consultant
865.974.0411
- Steven Cross, UT MTAS
Fire Management Consultant
Steven.Cross@tennessee.edu
931.981.3593
- Betsy Cunningham, UT MTAS
Human Resources Consultant
Betsy.Cunningham@tennessee.edu
865.974.6689
- John Grubbs, UT MTAS
Human Resource Consultant
John.Grubbs@tennessee.edu
615.532.2588
- Elisha Hodge, UT MTAS
Legal Consultant
615.532.6827
- Stephanie O'Hara, UT MTAS
Legal Consultant
865.974.0411
- Donald Pannell, UT MTAS
Fire Management Consultant
Donald.Pannell@tennessee.edu
901.233.1434
- Peter Voss, UT MTAS
Human Resource Consultant
Peter.Voss@tennessee.edu
731.425.4781

Additional Resources

Tennessee Public Chapter 465

Hyperlink: <https://publications.tnsosfiles.com/acts/113/pub/pc0465.pdf>

International Association of Fire Chiefs-Yellow Ribbon Report

Hyperlink: <https://www.iafc.org/docs/default-source/1vcos/20211103-iafc-yellow-ribbon-report.pdf>

CDC/NIOSH Blog

Hyperlink: <https://blogs.cdc.gov/niosh-science-blog/2023/03/15/preventing-workplace-suicide/>



mtas.tennessee.edu