Calendar No. 160

111TH CONGRESS *1st Session*	SENATE	REPORT 111–75

FEDERAL FIREFIGHTERS FAIRNESS ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 599

TO AMEND CHAPTER 81 OF TITLE 5, UNITED STATES CODE, TO CREATE A PRESUMPTION THAT A DISABILITY OR DEATH OF A FEDERAL EMPLOYEE IN FIRE PROTECTION ACTIVITIES CAUSED BY ANY OF CERTAIN DISEASES IS THE RESULT OF THE PERFORMANCE OF SUCH EMPLOYEE'S DUTY

SEPTEMBER 14, 2009.—Ordered to be printed

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SEPTEMBER 14, 2009.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 599]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 599) to amend chapter 81 of title 5, United States Code, to create a presumption that a disability or death of a Federal employee in fire protection activities caused by any of certain diseases is the result of the performance of such employee's duty, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

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I. PURPOSE AND SUMMARY

S. 599 creates a rebuttable presumption that a Federal firefighter who has a disability from or who has died as a result of certain specified diseases has suffered the disability or death as a result of the performance of such employee's job and therefore is eligible for compensation under the federal worker compensation law. S. 599 also contains an amendment requiring that medical facilities notify first responders who treated victims found to have an infectious disease and allows first responders who suspect exposure to

initiate procedures to determine whether exposure actually occurred.

II. Background and Need for the Legislation

Numerous studies have shown that firefighters—due to their daily exposure to stress, smoke, heat and various toxic substances—are far more likely than other workers to contract certain illnesses such as heart disease, lung disease, and certain cancers. In addition, the role firefighters play in providing emergency medical services often exposes them to a number of infectious diseases. Heart disease, lung disease, cancer, and infectious disease are now among the leading causes of death and disability for firefighters. The following are examples of the many studies that have established linkages between fighting fires and such diseases and conditions:

1. A study of male Massachusetts firefighters from 1987 to 2003 found increased risk for numerous cancers, including colon and brain cancer.[1]

2. A 2006 study conducted by the University of Cincinnati found that on-the-job exposure to soot and toxins creates an increased risk for various cancers among firefighters.[2]

3. A 2007 Harvard study published in the New England Journal of Medicine found that firefighters face a risk of death from heart attacks up to 100 times higher when involved in fire suppression as compared to non-emergency duties.[3]

4. A federal government study conducted during the development of an Occupational Safety and Health Administration Bloodborne Pathogen Standard showed that 98 percent of Emergency Medical Technicians and 80 percent of firefighters are exposed to bloodborne infectious diseases on the job.[4]

5. A 2007 study published in Occupational Medicine found that the preponderance of evidence supports the presumption of causation for numerous cancers for firefighter.[5]

Forty-two states have enacted "presumptive disability" laws which presume that cardiovascular diseases and certain cancers and infectious diseases contracted by firefighters are job-related for purposes of worker's compensation and disability retirement unless proven otherwise (see Figure 1). However, no such law covers firefighters employed by the federal government. There are approximately 15,000 federal firefighters, the majority of whom are employed by the Department of Defense.

According to the International Association of Fire Fighters (IAFF), Federal firefighters who have contracted cancers and infectious diseases have experienced difficulty in receiving compensation under the Federal Employee Compensation Act (FECA) (5 U.S.C.

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[1] Dongmug Kang, M.D., Ph.D., et al. "Cancer Incidence Among Male Massachusetts Firefighters, 1987–2003." *American Journal of Industrial Medicine*. 2008; 51:329–335.

[2] Grace K. LeMasters, Ph.D., et al. "Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 Studies." *Journal of Occupational and Environmental Medicine*k. 2006; 48(11):1189–1202.

[3] Stefanos N. Kales, M.D., M.P.H., et al. "Emergency Duties and Deaths from Heart Disease among Firefighters in the United States." *The New England Journal of Medicine*. 2007; 356(12):1207–1215.

[4] 29 CFR 1910.1030 Occupational Safety and Health Administration Regulatory Impact and Flexibility Analysis.

[5] Tee L. Guidotti. "Evaluating Causality for Occupational Cancers: The Example of Firefighters." *Occupational Medicine*. 2007; 57:466–471.

81) because of the difficulty of linking the disease to precise incidents or exposures. Because their work environment involves routine exposure to hazardous substances,[6] each incident—or the repeated exposure from many incidents over time—could potentially cause a disease or condition. This legislation would establish the presumption that the listed diseases and conditions are consistent with the work environment of firefighting. Therefore, in filing a claim associated with any of these diseases or conditions, an employee would no longer be required to establish a connection to a specific incident or incidents.

[6] See Kang et al: "Firefighters are known to be exposed to recognized or probable carcinogens. These include benzene, polycyclic aromatic hydrocarbons, benzo(*a*)pyrene, formaldehyde, chlorophenols, dioxins, ethylene exide, orthotoluidine . . ." (329).

Figure 1[7]:

State Presumptive Disability Laws

The following states have presumptive disability laws which recognize that firefighters are at increased risk for certain illnesses. These laws create a presumption that the specified diseases are job related, but the details of the laws vary greatly from state to state.

State	Heart Disease	Lung Disease	Cancer	Infectious Diseases	Parkinson's
Alabama	✓	✓	✓	✓*	
Alaska	✓	✓	✓*		
Arizona			✓*		
Arkansas					
California	✓		✓	✓	
Colorado	✓	✓	✓*	✓*	
Connecticut	✓				
Delaware					
District of Columbia					
Florida	✓			✓*	
Georgia	✓	✓			
Hawaii	✓	✓			
Idaho	✓	✓		✓	
Illinois	✓	✓	✓*	✓*	
Indiana	✓	✓	✓	✓*	✓
Iowa	✓	✓			
Kansas	✓	✓	✓*		
Kentucky					
Louisiana	✓	✓	✓*	✓*	
Maine	✓	✓		✓*	
Maryland	✓	✓	✓*		
Massachusetts	✓	✓	✓*		
Michigan	✓	✓			
Minnesota	✓*	✓*	✓*	✓	
Mississippi					

[7] Provided by the IAFF.

State	Heart Disease	Lung Disease	Cancer	Infectious Diseases	Parkinson's
Missouri	✓	✓	✓*		
Montana					
Nebraska			✓		
Nevada	✓	✓	✓*	✓*	
New Hampshire	✓	✓	✓*		
New Jersey		✓			
New Mexico	✓		✓*	✓*	
New York	✓	✓	✓*	✓*	
North Carolina					
North Dakota	✓	✓	✓	✓*	
Ohio	✓	✓			
Oklahoma	✓	✓	✓	✓*	
Oregon	✓	✓	✓*		
Pennsylvania	✓	✓		✓*	
Rhode Island		✓	✓	✓	
South Carolina	✓	✓			
South Dakota	✓	✓			
Tennessee	✓	✓	✓**		
Texas	✓	✓	✓*	✓*	
Utah				✓*	
Vermont	✓		✓*		
Virginia	✓	✓	✓*	✓*	
Washington	✓	✓	✓	✓*	
West Virginia					
Wisconsin	✓	✓	✓*		
Wyoming					

** Indicates that only specified diseases in these categories are covered*
*** Applies only to certain localities*

III. LEGISLATIVE HISTORY

On March 16, 2009, Senators Carper and Collins introduced S. 599, which was referred to the Senate Committee on Homeland Security and Governmental Affairs. On March 25, 2009, the bill was referred to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. The Subcommittee reported the bill to the full committee, and on May 20, 2009, the full Committee, by voice vote, ordered it reported favorably to the Senate floor with an amendment offered by Senator Coburn.

The Coburn amendment restores language originally in the Ryan White CARE Act of 1990 regarding notifying emergency responders of their exposure to infectious diseases. The amendment requires the Secretary of Health and Human Services to develop a list of life-threatening infectious diseases and guidelines regarding potential exposure and notification. Further, it requires that medical facilities notify first responders who treated victims found to have an infectious disease, and it allows first responders who suspect exposure to an infectious disease to initiate procedures to determine, through a designated officer and the medical facility, whether exposure actually occurred.

S. 599 was ordered reported favorably by voice vote as amended. Senator Coburn asked to be recorded as "No." Senators present were Senators Lieberman, Levin, Akaka, Carper, Pryor, McCaskill, Burris, Bennet, Collins, Coburn, and Voinovich.

Rep. Lois Capps introduced a similar bill (H.R. 948) in the House of Representatives on February 10, 2009.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 designates the name of the Act as the "Federal Firefighters Fairness Act of 2009."

TITLE I. FEDERAL FIREFIGHTERS FAIRNESS

Section 101. Certain diseases presumed to be work-related cause of disability or death for Federal employees in fire protection activities

Subsection (a) defines the class of employees to whom the bill would apply. The presumption created by the bill would only apply to individuals who are trained in fire suppression, authorized to engage in fire suppression, and engage in fire suppression and other emergency response activities as a primary responsibility of their job.

Subsection (b) lists 20 infectious and non-infectious diseases for which the presumption would apply for employees covered by the bill. The Secretary of Labor would be permitted to add additional diseases to the list if he or she determines that such diseases are related to the hazards firefighters face on the job. The presumption for non-infectious diseases would only apply to employees who have been employed by the Federal government for five years or more. The presumption for infectious diseases would apply to all covered

employees. The presumption for both non-infectious and infectious diseases would be rebuttable by a preponderance of the evidence.

Subsection (c) requires the National Institute of Occupational Safety and Health in the Centers for Disease Control and Prevention to report to Congress, no later than 10 years after enactment, on the claims filed under the presumption created in this title and on the available research related to the health risks associated with firefighting. The report will also include any recommendations for administrative or legislative actions necessary to ensure that those diseases most closely associated with firefighting are included in the presumption created in the bill.

Subsection (d) states that the presumption included in this title applies only to injuries diagnosed and deaths occurring after the date of enactment.

TITLE II. NOTIFICATIONS OF POSSIBLE EXPOSURE TO INFECTIOUS DISEASES

Section 201. Infectious diseases and circumstances relevant to notification requirements

Subsection (a) requires the Secretary of Health and Human Services to complete a list of potentially life-threatening infectious diseases to which emergency responders may be exposed; guidelines describing the circumstances in which emergency responders may be exposed to these infectious diseases; and guidelines describing how medical facilities should determine whether an emergency responder was exposed to these infectious diseases. These should be completed no later than 180 days after enactment.

Subsection (b) requires that the Secretary's list identifying potentially life-threatening infectious diseases specify the infectious diseases that are routinely transmitted through airborne or aerosolized means.

Subsection (c) requires that the Secretary provide the completed list and guidelines to state public health officers for dissemination throughout the states. It also requires that the Secretary make copies available to the public.

Section 202. Routine notifications with respect to airborne infectious diseases in victims assisted

Subsection (a) requires medical facilities to notify the designated officer of emergency response employees (who has been selected pursuant to Section 206 below) when the facilities determine that a victim the emergency responders transported has an infectious disease. It also requires medical facilities to notify the designated officer if they determine that a victim has a disease that is transmittable through the air.

Subsection (b) requires that medical facilities issue these notifications no later than 48 hours after making the determination.

Section 203. Request for notifications with respect to victims assisted

Subsection (a) establishes a process for an emergency responder to request that a designated officer determine whether the responder was exposed to an infectious disease. If a responder be-

lieves that a victim he treated or transported exposed him to an infectious disease, the responder can request that a designated officer begin a review.

Subsection (b) lists the responsibilities of the designated officer in making an initial determination as to whether an emergency responder was exposed to an infectious disease. The subsection requires the designated officer to collect and evaluate the facts and determine whether the victim has any of the diseases the Secretary of Health and Human Services has listed.

Subsection (c) states that if the designated officer has determined that an emergency responder was exposed to an infectious disease, the officer must contact the medical facility that treated the victim and request an evaluation as to whether the emergency responder was exposed.

Subsection (d) states that after receiving a request from a designated officer, the medical facility must evaluate whether the emergency responder was exposed to an infectious disease. The facility must notify the designated officer of its determination in writing, including when the facility finds it has insufficient or no information to make a determination.

Subsection (e) requires the medical facility to notify the designated officer of its determination no later than 48 hours after receiving the request.

Subsection (f) identifies the responsibilities of medical facilities when a victim transported or treated by an emergency responder dies. Medical facilities must provide a designated officer's request for an evaluation to the facility determining the cause of death, if it is a different facility. This facility must evaluate whether the emergency responder was exposed to an infectious disease and notify the designated officer of its determination in writing no later than 48 hours after receiving the request.

Subsection (g) provides a process for reviewing a medical facility's decision that it has insufficient information to determine whether an emergency responder has been exposed to an infectious disease. In such cases, the designated officer can request that the public health officer in the medical facility's community evaluate the request and response. The public health officer must complete the evaluation no more than 48 hours after receiving the request. If the public health officer finds that sufficient information existed, he must resubmit the request to the facility, and the facility must provide a determination to the designated officer. If the public health officer finds that insufficient information existed, he should provide advice to the designated officer regarding the collection of appropriate facts, and he must resubmit the request on the behalf of the designated officer if the officer obtains them. The medical facility must then evaluate whether the emergency responder was exposed to an infectious disease and notify the designated officer of its determination in writing no later than 48 hours after receiving the request.

Section 204. Procedures for notification of exposure

Subsection (a) states that the notifications medical facilities provide to designated officers should include the name of the infectious

disease involved and the date the emergency responder transported the victim.

Subsection (b) requires medical facilities to inform designated officers when they mail notifications. No later than 10 days after being informed, the designated officer must inform the medical facility whether or not he has received the notification.

Section 205. Notification of employee

Subsection (a) states that upon receiving a notification, a designated officer should immediately notify employees who responded to the emergency involved and may have been exposed to an infectious disease, to the extent practicable.

Subsection (b) describes the contents of a notification to an emergency responder. The notification should inform an employee of the fact that he may have been exposed to an infectious disease, as well as the name of the disease; medically appropriate actions; and the date of the emergency.

Subsection (c) requires the designated officer to immediately inform an emergency responder, to the extent practicable, if the medical facility has determined that the responder was not exposed to an infectious disease or that it lacks sufficient information to make a determination.

Section 206. Selection of designated officers

Subsection (a) requires that each state's public health officer select a designated officer for each employer of emergency responders in the state. Designated officers will receive notifications and responses from medical facilities and make requests for emergency responders.

Subsection (b) states that public health officers should give preference to individuals trained in health care of the control of infectious diseases when selecting designated officers.

Section 207. Limitations with respect to duties of medical facilities

Section 207 describes the conditions under which the duties established in this title apply to medical facilities. These duties apply to information medical facilities possess when they are treating a victim or during the 60 days after the emergency responders bring the victim to the facility, whichever ends first. These duties do not apply 30 days after the end of either of these periods. However, an exception is made if a designated officer makes a request to a medical facility on behalf of an emergency responder before the end of these 30 days.

Section 208. Rules of construction

Subsection (a) states that this title does not authorize a cause of action or civil penalties against a medical facility or designated officer for not complying with the duties described in this title.

Subsection (b) states that this title does not authorize or require that medical facilities test victims for infectious diseases.

Subsection (c) states that this title does not authorize or require that a medical facility, designated officer, or a similar employee disclose identifying information of a victim or emergency responder.

Subsection (d) states that this title does not authorize an emergency responder to fail to respond or deny services to the victim of an emergency.

Section 209. Injunctions regarding violation of prohibition

Subsection (a) states that the Secretary of Health and Human Service can commence a civil action in order to obtain temporary or injunctive relief if this title is violated.

Subsection (b) requires the Secretary of Health and Human Services to establish a process for emergency responders to report violations of this title. The Secretary should investigate these allegations when appropriate.

Section 210. Applicability of title

Section 210 states that this title should not apply to a state whose chief executive has certified to the Secretary of Health and Human Services that state law is in substantial compliance with this title.

V. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Congressional Budget Office states that the bill would impose both intergovernmental and private-sector mandates as defined in the Unfunded Mandate Reform Act (UMRA). However, based on the number of emergency medical transports that could result in exposure to an infectious disease and the cost of notifications, CBO estimates that the costs of the mandates would fall below the annual thresholds established in UMRA ($69 million for intergovernmental mandates and $139 million for private-sector mandates in 2009, adjusted annually for inflation).

VI. Congressional Budget Office Cost Estimate

S. 599—Federal Firefighters Fairness Act of 2009

Summary: S. 599 would expand eligibility for federal firefighters with certain diseases and conditions to receive medical, wage replacement, and death benefits under the Federal Employees' Compensation Act (FECA).

CBO estimates that enacting S. 599 would increase net direct spending for benefits for firefighters by $26 million over the 2010-2019 period. Enacting the bill would not affect revenues.

Because employing agencies ultimately bear the cost of federal workers' compensation claims, CBO estimates that discretionary costs for salaries and expenses would rise along with the FECA claims. Assuming appropriation of the necessary amounts, CBO estimates that spending subject to appropriation would increase by $25 million over the 2010–2019 period.

S. 599 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require public and private medical facilities to notify emergency response employees of possible exposures to an infectious disease. CBO estimates that the costs of the mandates

would fall below the annual thresholds established in UMRA for both intergovernmental and private-sector mandates ($69 million and $139 million in 2009, respectively, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 599 is shown in the following table. The costs of this legislation fall within budget function 600 (income security).

	By fiscal year, in millions of dollars—											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority ..	2	2	2	2	3	3	3	3	3	3	11	26
Estimated Outlays	2	2	2	2	3	3	3	3	3	3	11	26
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	1	2	3	3	3	3	3	3	3	3	12	27
Estimated Outlays	1	2	2	2	3	3	3	3	3	3	10	25
Memorandum:												
Intragovernmental Collections from Agencies to Pay for FECA Costs	−1	−2	−2	−2	−3	−3	−3	−3	−3	−3	−10	−25

Notes: Components may not sum to totals because of rounding.
FECA = Federal Employees' Compensation Act.

Basis of estimate: For purposes of this estimate, CBO assumes that S. 599 will be enacted near the start of fiscal year 2010.

Direct spending

S. 599 would make federal firefighters who contract certain diseases presumptively eligible for benefits under FECA. The specified diseases include heart disease, lung disease, certain cancers, tuberculosis, hepatitis A, B, or C, and human immunodeficiency disease. Affected firefighters would be eligible for federal workers' compensation benefits, including medical expenses, disability payments, and death payments to survivors. Based on the incidence, disability, and death rates for the specified diseases, CBO estimates that between 200 and 300 people per year, on average, would qualify for benefits. CBO estimates that providing FECA benefits for eligible firefighters would increase direct spending by $28 million over the 2010–2019 period.

Costs under FECA would be partially offset by small savings in federal payments for disability and payments under the Federal Employees Health Benefits program. For those claimants who would have been able to qualify for federal disability payments under current law, those disability payments would be replaced by FECA payments. In addition, the federal government's share of health care premiums for retirees would decline slightly as costs for covered medical conditions would be paid by FECA. After accounting for those offsets ($2 million over the 10-year period), CBO estimates that enacting S. 599 would increase net mandatory spending by $26 million over the 2010–2019 period.

Spending subject to appropriation

Because FECA costs ultimately are charged back to the claimant's employing agency, the costs are borne by those agencies' salaries and expense accounts. Therefore, CBO estimates that enacting

S. 599 would increase discretionary costs for salaries and expenses governmentwide by a total of $25 million over the 2010–2019 period, assuming appropriation of the estimated amounts. Those reimbursements would be transferred to and credited to the FECA account, as shown in the memorandum line in the table above.

Intergovernmental and private-sector impact: Under current law, public and private medical facilities must notify workers, including emergency response employees, if they have or could have been exposed to bloodborne pathogens. S. 599 would impose additional duties on medical facilities, including those that establish the cause of death, to notify emergency response employees if they have or could have been exposed to an infectious disease, including an airborne infectious disease. They also would be required to evaluate and respond to a notice request from emergency response employees who believe they may have been exposed to an infectious disease while attending, treating, assisting, or transporting an individual to the facility. The duty to comply with these new requirements would impose both intergovernmental and private-sector mandates as defined in UMRA. Based on the number of emergency medical transports that could result in exposure to an infectious disease and the cost of notifications, CBO estimates that the costs of the mandates would fall below the annual thresholds established in UMRA ($69 million for intergovernmental mandates and $139 million for private-sector mandates in 2009, adjusted annually for inflation).

Estimate prepared by: Federal costs: Christina Hawley Anthony; Impact on state, local, and tribal governments: Lisa Ramirez-Branum; Impact on the private sector: Patrick Bernhardt.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. Changes to Existing Law Made by the Bill, as Reported

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 599 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III—EMPLOYEES

Subpart G—Insurance and Annuities

CHAPTER 81—COMPENSATION FOR WORK INJURIES

Subchapter I—Generally

§ 8101. Definitions

For the purpose of this subchapter—

* * * * * * *

(19) "organ" means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back; [and]

(20) "United States medical officers and hospitals" includes medical officers and hospitals of the Army, Navy, Air Force, Department of Veterans Affairs, and United States Public Health Service, and any other medical officer or hospital designated as a United States medical officer or hospital by the Secretary of Labor [.]*; and*

(21) 'employee in fire protection activities' means a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous material worker, who—

(A) is trained in fire suppression;

(B) has the legal authority and responsibility to engage in fire suppression;

(C) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk; and

(D) performs such activities as a primary responsibility of his or her job.

§ 8102. Compensation for disability or death of employee

* * * * * * *

(c)(1) With regard to an employee in fire protection activities, a disease specified in paragraph (2) shall be presumed to be proximately caused by the employment of such employee, subject to the length of service requirements specified. The disability or death of an employee in fire protection activities due to such a disease shall be presumed to result from personal injury sustained while in the performance of such employee's duty. Such presumptions may be rebutted by a preponderance of the evidence.

(2) The following diseases shall be presumed to be proximately caused by the employment of the employee:

(A) If the employee has been employed for a minimum of 5 years:

(i) Heart disease.

(ii) Lung disease.

(iii) The following cancers:

(I) Brain cancer.

(II) Cancer of the blood or lymphatic systems.

(III) Leukemia.

(IV) Lymphoma (except Hodgkin's disease).

(V) Multiple myeloma.

(VI) Bladder cancer.

(VII) Kidney cancer.

(VIII) Testicular cancer.

(IX) Cancer of the digestive system.

(X) Colon cancer.

(XI) Liver cancer.

(XII) Skin cancer.

(XIII) Lung cancer.

(iv) Any other cancer the contraction of which the Secretary of Labor determines to be related to the hazards to

which an employee in fire protection activities may be subject.

(B) Regardless of the length of time an employee has been employed, any uncommon infectious disease, including tuberculosis, hepatitis A, B, or C, and the human immunodeficiency virus (HIV), the contraction of which the Secretary of Labor determines to be related to the hazards to which an employee in fire protection activities may be subject.

○