

# Pension Reclassification

## What you need to know

By Richard Alles, Deputy Chief FDNY, Ret.

Every member who was active on 9/11 should be aware that they have the right to reclassify their pension in the event that they develop a disabling 9/11-related illness. Under the 2005 New York State WTC Disability Law, there is a presumption that many illnesses were caused by exposure to 9/11 toxins. The law covers cancer, lung disease, and certain psychological conditions including post-traumatic stress disorder, anxiety, and depression.

The reclassification provision of the 2005 law applies to members who were active on 9/11, but have since retired on a service or non-WTC disability pension. The member's pension will be reclassified if they would have met the criteria for a WTC-disability pension, had they not already been retired.

Moreover, a member who develops a WTC-related cancer or lung disease may reclassify a disability pension awarded for a WTC-related psychological condition.

Remember that any 9/11 responder who is diagnosed with any WTC-related illness is eligible to receive compensation for pain and suffering from the Victim Compensation Fund. In addition, any member or retiree who receives a WTC-disability pension, either in the ordinary course or by reclassifying, may also be entitled to compensation for economic loss from the VCF.

A tremendous amount of time and effort was expended in getting the WTC Health Program and the Victim Compensation Fund permanently extended. These benefits will be there for the 9/11 community for the rest

of their lives.

We urge you to make your annual WTC medical screening exam a part of your retirement. Members who remain focused on annual checkups stand the best chance of enjoying the benefits of their well-earned pension.

Remember that your union pension trustee is an extremely important source of information for you. If you are an active member, and have been diagnosed with cancer or respiratory disease, and are going through the disability process, or if you are a retiree seeking to reclassify your pension, your first call should always be to your union. Of course, you are welcome to call our office for a second opinion, as well as a free consultation to discuss your right to compensation from the Victim Compensation Fund.

## Hey senior members:

The new class of probationary firefighters have a lot to learn from you. In addition to everything you'll teach them on the job, remind them that as firefighters, they are entitled to a free will and health proxy from our law firm. We've prepared thousands of free wills for New York's bravest, and we want to make sure that all members take advantage of this important and FREE service (even those who think they are too young, too broke or too single to need one).



These siblings are happy that their parents finally completed their Wills.



## Hey probies:

While you have a lot to learn from the senior members, don't think you can't show them a thing or two. The Barasch and McGarry FREE calendar app for firefighters includes a group chart calendar, overtime calculator, newsletters, scanners, news updates, and so much more. Try it out, and let us know how you like it. And then help out those senior members who are, to put it kindly, less technologically skilled than you.

**This is the SEVENTY-EIGHTH edition of the BARASCH McGARRY SALZMAN & PENSON NEWSLETTER...attorney advertising which presents topics of interest to firefighters. For questions, additional copies, or more information about topics raised in this newsletter, call or write:**

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# FIREFIGHTERS' NEWSLETTER



## A CALL TO ACTION

### What Retired Firefighters Must Do Now To Protect Their Rights

The 9/11 Victim Compensation Fund has been permanently extended and fully funded until the year 2090. This means that all firefighters and officers who were exposed to 9/11 toxins are covered by the WTC Health Program (WTCHP) and the Victim Compensation Fund (VCF) for the rest of their lives! Retirees make up the majority of those who were exposed, and must be especially proactive about protecting their health and legal rights. Here's what retirees need to know.

#### 1. There are two categories of retired members

##### If you were active on 9/11/01:

You and your spouse should know where your Notice of Participation (NOP) is. This is your proof that you were exposed to the WTC toxins.

If you are not in possession of your NOP, request a copy from the Pension Unit.



Mike Barasch speaks to retirees about how the permanent extension of the 9/11 Victim Compensation Fund impacts them

##### If you were already retired on 9/11/01:

You will need proof that you volunteered at Ground Zero and were exposed to the WTC toxins. Your proof of presence is best accomplished by having 2 eyewitness fill out affidavits. Even if you're currently healthy, get those affidavits filled out now, before your witnesses pass away, move away, or can no longer be located. Don't leave this to your spouse to do after you get sick or die. And,

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## PROBIE ROB TILEARCIO FOLLOWS IN HIS FATHER'S FOOTSTEPS

ONE OF 21 LEGACIES TO JOIN FDNY

Congratulations to our friend and former colleague, Robert Tilearcio, who was sworn in as a firefighter this past September. Rob is following in the footsteps of his father, our client, Robert 'Skippy' Tilearcio, a member of Engine 266 who served the City of New York for 36 years. Rob's accomplishment is all the more meaningful because in 2017, his father succumbed to brain cancer due to his work at Ground Zero.

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THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT FIREFIGHTER RIGHTS



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keep those affidavits in a safe place for possible future use.

**If you would like us to send you blank affidavit forms for your witnesses to complete, please call us. We will be happy to send them to you.**

2. **Everyone should go for their annual WTCHP exam AND full-body dermatology exam**

Skin cancers, including basal cell and squamous cell carcinomas, are the most common of the 68 cancers linked to the toxic dust.

The WTC Health Program has clinics in all 50 states. You need not come back to BHS for your annual exam.

Prescriptions for 9/11 illnesses are covered in full by the WTCHP and are mailed directly to your home if you prefer.

3. **Victim Compensation Fund Awards**

While you should be going to your annual WTCHP medical exam and an annual full-body dermatology exam for your health (early detection really can save your life), if you need a financial incentive to go for these exams, you should know that Victim Compensation Fund awards are tax free and that claimants are awarded:

\$90,000 for basal cell and squamous cell carcinomas, and \$250,000 for melanoma skin cancer.

\$200,000 - \$250,000 for every other form of cancer and up to \$340,000 for multiple cancers which, sadly, all too many of our members have been diagnosed with.

4. **Compensation for widows**

Widows are entitled to \$250,000 for

their husbands' pain and suffering, and an additional wrongful death award of \$350,000 plus \$100,000 for any child under the age of 18. Think of it like a free life insurance policy since, if you took the full option when you retired, your pension will stop at your death. A VCF wrongful death claim would be a financial god-send to any widow who has lost her husband's pension upon his death. Please reach out to the widows that you are in touch with. While there are some strict deadlines, it's likely not too late for them to file a claim if their husband died in the past 15 years due to a serious respiratory illness or cancer.

**If you want more information about the Victim Compensation Fund or the WTC Health Program, please call us. All consultations are free.**

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Rob's father was a hero in the truest sense of the word. He made a dozen trips to D.C. to advocate for sick 9/11 workers, even as he battled his own illness. It was important to him to walk the halls of Congress on behalf of those who were too sick to be there themselves.

After his father's death, Rob carried that mantle, traveling to D.C., some with our firm and some with the UFOA, to tell his father's story. Their extraordinary efforts were instrumental in the extension of the Zadroga Act, which permanently funded the World Trade Center Health Program and the

9/11 Victim Compensation Fund.

Rob is now a probationary firefighter in Ladder 113. He is part of a historic probie class. It includes 21 legacy firefighters, 19 of whom lost a parent due to 9/11 or its aftermath, and two others who lost a parent in other line-of-duty accidents. We are enormously proud of Rob's accomplishments, and we wish him and his fellow probies the very best as they begin their firefighting careers.



# WOULD YOU DRIVE THE LENGTH OF A FOOTBALL FIELD WITH YOUR EYES CLOSED?

## Texting = Distracted Driving

We know that many of you drive very long distances to get to and from work, sometimes after an exhausting 24. We imagine those long drives can be lonely, and that sometimes, you find yourself doing something that you know is wrong, (but that feels safe). So, tell us, during those long, lonely drives, do you ever... glance at your phone?

If you do, you're not alone.

We've all seen distracted drivers; people who couldn't resist the ping of their phone, who fumbled around for a bottle of water, or who blasted their radio so loudly that they were oblivious to the blaring siren of a fire truck. We shake our heads in bewilderment at the lapse in judgment, maybe even mutter some words we can't print here. But if we're being perfectly honest, perhaps we've done it too, maybe even with our kids in the car.

What exactly is distracted driving? Really, it's anything that takes your eyes off of the road. Talking to someone behind you, looking for something that fell to the floor, and fiddling with the radio, are all common examples. But the most alarming distraction is texting. On average, sending or reading a text takes your eyes off the road for 5 seconds. At 55 mph, that's like driving the length of an entire football field with your eyes closed.

Why is it that so many of us do something that we recognize as dangerous? Science may have some answers. Some scientists think that our smartphones are actually affecting our brains. When our phones ping to alert us to an incoming text or social media update, our brains get a hit of dopamine. The dopamine reward centers are the same centers that have to do with pleasure from eating, sex, drugs and alcohol. When our brains are in that elevated dopamine state, we do not have the same capacity to access the parts of our brain where judgment and reason occur, the prefrontal cortex. In other words, we aren't the best decision-makers during those moments.

Although, logically, we the know the text can wait, we tell ourselves that we'll just take a peek because maybe it's important - an emergency even. And every time we take a look at our phones and get away with it, we reinforce the bad behavior. Since nothing bad happened, we think we'll be okay if we do it again. We start to believe that maybe the reason nothing bad happened is that we're exceptionally skilled multi-taskers, when, in truth, we just got lucky. If an unexpected hazard had popped up when our eyes were glancing at the phone, we wouldn't have enough time to react. That's one of the most common causes of fatal accidents.

### A texting ticket =

### 24% insurance rate increase and 5 points

And, because we're lawyers, we'd be remiss if we didn't remind you that distracted driving is against the law. Under VTL 1225-d, merely holding an electronic device gives rise to a presumption of use, even if you're stopped at a red light. Drivers convicted of a 1225-d violation are assessed 5 points on their license, per violation, and will get hit with fines and surcharges. On average, one texting ticket will increase your auto insurance premiums by 24%.

If you injure someone, you'll surely be sued. If you injure yourself, you could lose your career for a non-line-of-duty injury, endangering everything you've worked so hard for.

All this is to say that sometimes we all need to be reminded to put aside our electronic distractions. Never use text messaging, social media, email, video games or the internet with a wireless device, including those built into the vehicle, while driving. Install anti-texting apps on your kids' phones to help them resist temptation. And if you ever get into an accident caused by a distracted driver, remember, we're here to help, and we're just a phone call away... when you aren't driving!