To: New Jersey Law Revision Commission  
From: Katherine DeMottie  
Re: Temporary Disability Benefits for Volunteer Firefighters  
Date: April 4, 2019

MEMORANDUM

Executive Summary

The efforts and risks shouldered by volunteer firefighters have long been legally recognized by certain protections and exemptions in New Jersey’s employment law. The Workers’ Compensation Act specifically delineates workers’ compensation benefits for such voluntary services, but certain language pertaining to compensation for injury and/or death has been identified by the Court as unclear. Extrinsic evidence indicates a history of legislative expansion of these protections for volunteer firefighters, but the statute as it stands does not reflect this as clearly as it could.

Statute

The relevant statutory language is contained in N.J.S. 34:15-75, which pertains to compensation for injury and death to certain volunteers and other workers, and it provides:

Compensation for injury and death, either or both, of any volunteer fireman, county fire marshal, assistant county fire marshal, volunteer first aid or rescue squad worker, volunteer driver of any municipally-owned or operated ambulance, forest fire warden or forest fire fighter employed by the State of New Jersey, member of a board of education, special reserve or auxiliary policeman doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, emergency management volunteer doing emergency management service, health care workers, public health workers and support services personnel registered with the Emergency Health Care Provider Registry pursuant to section 6 of P.L.2005, c. 222 (C.26:13-6) and doing emergency management service for the State, or any volunteer worker for the Division of Parks and Forestry, the Division of Fish and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust, shall:

a. Be based upon a weekly salary or compensation conclusively presumed to be received by such person in an amount sufficient to entitle him, or, in the event of his death, his dependents, to receive the maximum compensation by this chapter authorized; and…

b. Not be subject to the seven-day waiting period provided in R.S.34:15-14.  

1 N.J.S. 34:15-75.
Background

In Kocanowski v. Township of Bridgewater\(^2\), after the plaintiff was injured in the line of duty as a volunteer firefighter for Bridgewater Township, she filed a claim in the Division of Workers’ Compensation seeking temporary disability benefits under N.J.S. 34:15-75. The plaintiff was not otherwise employed at the time of the injury, but had previously been employed in paid various paid positions. The injury prevented the plaintiff from returning to both her volunteer work and any form of outside employment, thus rendering her without a source of income other than the $125 in benefits (per week for one year) received from the fire department for which she worked.

The Division of Workers’ Compensation judge denied the plaintiff’s application on the grounds that temporary disability benefits were intended to be a wage-replacement and the plaintiff was not employed at the time of the accident, thus not having any wages to be replaced. The Appellate Division affirmed the denial of benefits to the plaintiff.

The Supreme Court reversed the Appellate Division’s decision and remanded the matter to the Division of Workers’ Compensation for the award of benefits in conjunction with Supreme Court’s opinion. In the opinion, delivered by Justice Timpone, the Court found, as a matter of first impression, that “[w]hile N.J.S.A. 34:15-75’s language is unclear, we find its legislative history indicates a strong intent to provide temporary disability coverage to volunteer firefighters at the maximum compensation provided for in the Act.”\(^3\)

Analysis

In Kocanowski, the Supreme Court was asked to consider the provisions of the Workers’ Compensation Act, N.J.S. 34:15-1 to -146, in regard to volunteer firefighters injured in the line of duty. Currently, subsection 75(a) allows any volunteer firefighter (or any volunteer conducting emergency services) to receive the “maximum compensation” for injury and/or death, “based upon a weekly salary or compensation conclusively presumed to be received.”\(^4\) The Court deemed this particular clause to be unclear and indicated that there was no guidance provided in the relevant statutory language or in the available case law.\(^5\)

The Court outlined the history of the relevant statute, 34:15-75, as per the Legislature’s intent at its conception in 1952. This statute’s predecessor, created in 1932, provided implicit protections for injured firefighters who did not have another source of income:

“[A]ny volunteer fireman whose income is derived from any source other than wages or salaries shall be entitled to receive the maximum compensation ... and where not employed at the time of ... injury, such compensation shall be ascertained and paid upon the basis of the weekly compensation last received by such person when so employed.”\(^6\)

\(^3\) Id. at 3. Emphasis added.
\(^4\) N.J.S. 34:15-75(a).
\(^5\) Id. at 5.
\(^6\) Id. at 6 (citations omitted).
Recognizing both the important role of volunteer firefighters in New Jersey and the intent of the Legislature to encourage such work through protective legislation, courts have thus liberally construed the Workers’ Compensation Act in regard to volunteer firefighters.\textsuperscript{7} Even though the statute was amended in 1952 to its current form, eliminating the implicit language above, it would be “incongruous and inconsistent” for the Legislature to “abruptly limit the class of volunteer firefighters who qualify for temporary disability” after years of policies aimed at expanding these very protections.\textsuperscript{8} The Court concluded that N.J.S. 34:15-75 is not a barrier to coverage despite the fact that its language does not clearly state this.\textsuperscript{9}

The “method of calculating compensation for temporary disability” outlined in N.J.S. 34:15-38 contains language such as “unable to continue at work” and “able to resume work,” which the defendant argued limits coverage to firefighters with outside employment at the time of the accident.\textsuperscript{10} The previous version of 34:15-75 that specifically did not bar unemployed firefighters existed for a number of years alongside 34:15-38 and it was not read to prevent coverage, and the legislative history indicates no such intent.

Furthermore, the Court commented that reading these two statutes together in the manner encouraged by defendant “would lead to absurd results” as exemplified by the following situation:

Defendant’s interpretation would allow a volunteer firefighter who completes work for a nominal salary, say $5 weekly to deliver newspapers, to automatically receive the maximum compensation authorized while a volunteer firefighter like Kocanowski, who had no outside compensation at the time of her injury, would receive no temporary disability benefits. Both firefighters take the same risks in their duties for the fire departments. It is an illogical result that the former firefighter would receive $855 weekly in benefits (based upon the maximum available at the time Kocanowski was injured), while the latter would receive nothing.\textsuperscript{11}

The forgoing suggests that the current form of 34:15-75 is not as clear as it could be, nor as consistent with the Legislature’s intent. While the Legislature may have intended to broaden the protections of volunteer workers under the Workers’ Compensation Act, the wording with which they constructed the statute impedes this objective.

Conclusion

Staff seeks authorization to conduct additional research and outreach to determine whether it would be appropriate to clarify the language of N.J.S. 34:15-75(a) to more accurately represent the Legislature’s intent in enacting the statute and eliminate unanticipated or unintended limitations to benefits for volunteer firefighters.

\textsuperscript{7} Id.
\textsuperscript{8} Id.
\textsuperscript{9} Id. at 7.
\textsuperscript{10} N.J.S. 34:15-38.
\textsuperscript{11} Id.