



CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

September 1, 2021

President Joseph P. Lopes and Honorable Members of
the New Bedford City Council
133 William Street
New Bedford, MA 02740

Re: Home Rule Petition Concerning Employee Death Benefits

Dear President Lopes and Members of the Council:

I write to address the home rule petition approved unanimously by the Council last month. The petition would establish a legal presumption that any death of a city employee from Covid-19 would be deemed to have occurred in the performance of the employee's official duties.

Like you, I firmly believe if an employee dies as a result of contracting Covid-19 in the workplace, his or her family should be entitled to enhanced benefits available under state law. It's the right thing to do, both to ensure their family is cared for and to honor their service. Simply because the circumstances surrounding a death from an infectious disease may be less visceral than those typically associated with work injuries shouldn't make a difference.

My opinion is rooted in family experience. In the last pandemic, my great-grandfather, John Kinney, was a thirty-one-year-old New Bedford patrolman, who contracted the Spanish Flu while assisting in the removal of the bodies of victims from their homes. Though his death days later would fairly be characterized today as having occurred "in the line-of-duty," no family benefits were available back then, a reality which led to my grandfather being placed in the orphanage at the former St. Mary's Home. Thanks to social safety net laws enacted since then, the families of employees who die in the performance of their duties these days don't have to go through a similar ordeal.

The issue raised by the Council's petition is not whether accidental death benefits are available to surviving family members, but how eligibility for those benefits should be established. In general, Massachusetts law provides that certain surviving family members may receive accidental death benefits – in addition to the retirement benefits available to surviving family members -- if he or she can prove that the employee died in the performance of his or her official duties. This is ordinarily a straightforward exercise; more often than not it is enough for the family member to show that the employee was at his workplace doing his job when the fatal injury occurred. When the death is caused by an infectious disease whose origin is not evident, however, more circumstantial evidence may be required. The prospective beneficiary would be expected to produce evidence of on-duty contacts with infected individuals in the period of likely exposure, and to show that off-duty contacts were less probable.

OFFICE OF THE CITY CLERK
NEW BEDFORD, MA
2021 SEP - 1 PM 3:20
CITY CLERK

In an apparent attempt to simplify the process, the Council has created a presumption that if a city employee who was not working remotely dies from Covid-19, then the city employee contracted Covid-19 in the course of his or her official duties. There are several problems, however, with how the petition is drafted.

First, the petition does not make clear whether the presumption is rebuttable. If it isn't, the petition could result in awards that have no connection to the workplace. Studies have consistently found that most Covid cases originate from household spread and social gatherings, and that workplace exposures are less common. This is consistent with our experience here in New Bedford. In fact, through contact tracing, we are aware that some infected city employees were exposed while on vacation or they caught the virus from a significant other returning from vacation. Others were exposed to it at parties. Fortunately, none of these employees died, but if they had, the petition, as drafted, could be interpreted as requiring the payment of enhanced benefits. This would hardly be an appropriate use of tax dollars, but it also would tend to undermine the reverence accorded employees who actually have died in the service of the city.

Second, the petition does not contain language that would preclude application of the presumption if the employee were unvaccinated. As I am certain that the Council would agree, it would be inappropriate to extend accidental death benefits where the employee refused to take a vaccine that had been found to be nearly 100% effective in preventing death, unless the employee had a valid medical or religious reason not to take it. Nevertheless, in its current form, the petition would require the City to pay enhanced benefits.

Third, the petition would provide greater pension benefits to the families of police officers and fire fighters who die of Covid-19 than it would provide to the surviving family members of other city employees. As drafted, the families of police officers and fire fighters who died of Covid-19 would receive one hundred percent of the maximum salary for the deceased police officer or fire fighter's position, while the families of other city employees who died of Covid-19 would receive seventy-two percent of the deceased employee's annual salary. The rationale for this distinction is unclear.

Because prospective beneficiaries should understand clearly what they are eligible for, I am sending the petition back to the Council unsigned so that the Council can correct these drafting flaws. The Council passed the petition without public debate, and without sending the matter to committee. A matter of this importance requires a more thorough analysis.

Sincerely,

Jon Mitchell



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND TWENTY-ONE

AN ACT AUTHORIZING THE CITY OF NEW BEDFORD TO QUALIFY CITY EMPLOYEES FOR CERTAIN DEATH BENEFITS WHEN THE CAUSE OF DEATH IS RELATED TO COVID 19.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, any police officer or firefighter in the City of New Bedford who, on or after March 1, 2020 dies while in active service to the city, and the cause of death is, upon receipt of proper proof, determined by the city's retirement board to be related to the deceased having COVID 19, such death shall be presumed to be a death "in the performance of duties" for purposes of determining the retirement allowance benefits for the spouse of the deceased and such spouse shall be eligible to receive the benefits pursuant to Chapter 32 Section 100 of the General Laws.

SECTION 2. Notwithstanding any general or special law to the contrary, any employee of the City of New Bedford, other than a police officer or firefighter, who is regularly attending work at the ordinary and usual workplace and not considered to be “working remotely” or “working from home” who, on or after March 1, 2020 dies while in active service to the City, and the cause of death is, upon receipt of proper proof, determined by the City’s Retirement Board to be related to the deceased having COVID 19, such death shall be presumed to be a death caused by the natural and proximate result of a personal injury sustained or hazard undergone while in the performance of his or her duties and without serious and willful misconduct on the member’s part thereby entitling the employee’s eligible survivor to an accidental death benefit pursuant to Chapter 32 Section 9 of the General Laws.

SECTION 3. This Act shall take effect upon its passage.