

## LAW REVIEW<sup>1</sup> 22058

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# The PACT Act Provides VA Disability Benefits to Burn Pit Victims with Certain Illnesses by Establishing Conditions for Presumptive Exposure

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## 11.0 – Veterans’ Claims

### I. INTRODUCTION

Burn pits are large areas where the military incinerates waste generated by military operations. This waste includes plastics, rubber, chemicals, petroleum products, munitions, medical and human waste, and more.<sup>3</sup> These burn pits have been used for decades in areas like Iraq, Kuwait, Qatar, United Arab Emirates, Saudi Arabia, and Bahrain.<sup>4</sup>

It is estimated that over 3.5 million service members have been exposed to these burn pits while serving overseas.<sup>5</sup> Exposure to burn pit smoke can and does lead to various health concerns, both short and long term. Some short-term effects include nausea, headaches, irritation of the eyes, respiratory tract, nose, and throat.<sup>6</sup> The long-term effects of burn pit exposure are far more serious and include types of cancers, asthma, COPD, rhinitis, and more.<sup>7</sup>

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<sup>1</sup> We invite the reader’s attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2,000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

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<sup>3</sup> *Issue Brief: Burn Pit Exposure*, DAV, <https://www.dav.org/wp-content/uploads/Burn-Pit-Exposure-2020.pdf> (last visited Aug. 22, 2022).

<sup>4</sup> *Id.*

<sup>5</sup> Leo Shane III, *For first time, some burn pit victims will get presumptive status for disability benefits*, MILITARY TIMES: VETERAN (Aug. 2, 2021), <https://www.militarytimes.com/veterans/2021/08/02/for-first-time-some-burn-pit-victims-will-get-presumptive-status-for-disability-benefits/>.

<sup>6</sup> War Related Illness & Injury Study Center, *Burn Pits (Trash and Human Waste Exposure)*, U.S. DEPARTMENT OF VETERANS AFFAIRS, <https://www.warrelatedillness.va.gov/education/factsheets/burn-pits.pdf> (last updated Nov. 2013).

<sup>7</sup> The PACT Act and your VA benefits, U.S. DEPARTMENT OF VETERANS AFFAIRS, <https://www.va.gov/resources/the-pact-act-and-your-va-benefits/> (last visited Aug. 22, 2022).

Veterans who were exposed to these burn pits previously had to file claims and prove a direct service connection to their illness. This was a heavy burden on the veteran because they had to show (1) medical evidence of a current disability; (2) evidence of burn pit exposure; and (3) evidence of a nexus between the burn pit exposure and the disability.<sup>8</sup> In 2019, the VA contracted with the National Academy of Medicine to conduct a study on the health effects of burn pit exposure.<sup>9</sup> This eventually led to the VA creating limited presumptions of service connection for some respiratory conditions related to burn pit exposure for certain veterans.<sup>10</sup> Once these presumptions were in place, veterans with qualifying conditions did not have to prove the direct service connection for their qualifying illnesses.<sup>11</sup>

However, as First Lieutenant Lauren Walker noted in her Law Review article on the subject, this development still left millions of veterans, whose conditions were not included in the presumptions, without their well-earned disability benefits through the VA.<sup>12</sup>

Congress finally recognized this major gap in coverage and passed the Honoring our PACT Act of 2022, also known as the PACT Act. The Act was signed into law on August 10, 2022 by President Joe Biden.

## II. DOES THE PACT ACT APPLY TO ME?

The PACT Act expands VA healthcare benefits for veterans and their dependents exposed to burn pits and other toxic substances.<sup>13</sup> In order to determine if your illness is covered, there are three primary considerations: 1) what conditions you suffer from; 2) when you served; and 3) where you served.<sup>14</sup> If you were assigned to a duty station in any of the specified countries and have any of the specified illnesses, the VA will automatically assume (or “presume”) that illness was caused by your service.<sup>15</sup> These are referred to as “presumptive conditions.” If you have a presumptive condition, you must only meet the service requirements and are not required to prove that your service caused the condition.<sup>16</sup>

### a. PRESUMPTIVE CONDITIONS FOR BURN PIT VICTIMS

The PACT Act added more than 20 presumptive conditions that benefit Gulf War era and post 9/11 Veterans. If you suffer from any of these conditions, you have met one of the conditions required for receiving benefits under the PACT Act.

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<sup>8</sup> Issue Brief: Burn Pit Exposure, *supra* note 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Lauren Walker, *The VA will begin Processing Disability Claims for Post-9/11 Burn Pit Vets*, ROA Law Review 21061 (Oct. 2021) (discussing burn pits and the VA’s initial steps in establishing presumptive disability benefits for veterans exposed to the toxins of burn pits).

<sup>13</sup> *The Pact ACT and Your Benefits*, *supra* note 7.

<sup>14</sup> Honoring our PACT Act of 2022, Pub. L. No. 117-168, 136 Stat. 1759.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

*The following cancers are now presumptive:*<sup>17</sup>

- Brain cancer
- Gastrointestinal cancer of any type
- Glioblastoma
- Head cancer of any type
- Kidney cancer
- Lymphatic cancer of any type
- Neck cancer of any type
- Pancreatic cancer
- Reproductive cancer of any type
- Lymphoma of any type
- Melanoma
- Respiratory (breathing-related) cancer of any type

*Additionally, the following illnesses are also now presumptive:*<sup>18</sup>

- Asthma that was diagnosed after service
- Pulmonary fibrosis
- Chronic sinusitis
- Emphysema
- Interstitial lung disease (ILD)
- Chronic obstructive pulmonary disease (COPD)
- Chronic bronchitis
- Pleuritis
- Chronic rhinitis
- Sarcoidosis
- Granulomatous disease
- Constrictive bronchiolitis
- Obliterative bronchiolitis

#### **b. PRESUMPTION OF EXPOSURE BASED ON WHEN AND WHERE YOU SERVED**

The VA will also look at where you served and the time periods you were serving. If you were assigned a duty station in any of the following locations during the designated time periods, the VA will presume that you were exposed to burn pit toxins.<sup>19</sup>

*If you assigned to a duty station on or after August 2, 1990 in the following locations:*<sup>20</sup>

- Bahrain
- Kuwait
- Qatar
- Iraq
- Oman
- Saudi Arabia

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<sup>17</sup> *Id.* at 1784.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 1787.

- Somalia
- The United Arab Emirates (UAE)
- The airspace above any of these locations

*If you were assigned to a duty station on or after September 11, 2001 in any of the following locations:*<sup>21</sup>

- Afghanistan
- Djibouti
- Egypt
- Jordan
- Lebanon
- Syria
- Uzbekistan
- Yemen
- The airspace above any of these locations

If you 1) suffer from any of the presumptive conditions AND 2) were assigned a duty station in one of the presumptive exposure locations, the PACT ACT applies to you.

### **III. THE PACT ACT APPLIES TO ME, NOW WHAT?**

If the PACT Act applies to your situation, that means that you are entitled to disability benefits for the covered illness.<sup>22</sup> If you have a pending claim for a condition that is now presumptive, you do not need to do anything; the VA will consider your condition to be presumptive.<sup>23</sup> If your disability claim was previously denied and your condition is now considered presumptive you can submit a Supplemental Claim and the VA will review your claim again.<sup>24</sup> Additionally, if you are a surviving family member of a Veteran whose death was attributed to one of these presumed illnesses, you may also be entitled to survivor benefits.<sup>25</sup>

In order to claim the benefits to which you are entitled, you must file for disability compensation with VA Form 21-526EZ. You can do this by logging in to your VA account online or calling the VA directly at 800-698-2411 (TTY: 711). If your disability claim was previously denied, you should fill out the Supplemental Claim Form (VA Form 20-0995). All of these forms can be found at <https://www.va.gov/resources/the-pact-act-and-your-va-benefits/#getting-benefits>.

As of the publishing of this article, the VA has stated that they will start to process PACT Act related benefits in January of 2023. If you apply for benefits any time in the next year and your application is approved, your compensation will be backdated to August 10, 2022. This means

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<sup>21</sup> *Id.* at 1787-88.

<sup>22</sup> *Id.*

<sup>23</sup> *The Pact ACT and Your Benefits*, *supra* note 7.

<sup>24</sup> Honoring our PACT ACT § 204.

<sup>25</sup> *Id.* at 1771.

you will receive the amount you would have received from August 10, 2022 to the date the VA grants your application.<sup>26</sup>

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ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America  
1 Constitution Ave. NE  
Washington, DC 20002<sup>28</sup>

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<sup>26</sup> *The Pact ACT and Your Benefits*, *supra* note 7.

<sup>27</sup> Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

<sup>28</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).