

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

House Bill 1202 (Delegate McHale, et al.)
Economic Matters

Workers' Compensation - Disability Due to Maryland Occupational Safety and Health Act Violation - Action for Damages

This bill permits an employee to bring an action for damages against an employer if the employee suffers a permanent partial disability of at least 25% and the injury causing the disability is the result of a violation of occupational safety and health (OSHA) standards or a failure to comply with an OSHA citation, order, or injunction. This right to sue is in addition to any rights the employee has to bring a claim for compensation under workers' compensation laws. In the event of death, the surviving spouse, child, or dependent of the employee may bring an action for damages against the employer.

Fiscal Summary

State Effect: Potential increase in expenditures. Revenues would not be affected.

Local Effect: Potential increase in expenditures. Revenues would not be affected.

Fiscal Analysis

State Expenditures: This bill could increase State expenditures by (1) exposing the State to additional litigation and possible awards; and (2) increasing the State's costs for administering the Maryland Occupational Safety and Health program.

This bill would permit a State employee who suffers a permanent partial disability of at least 25% to sue the State if the injury causing the disability is the result of a violation of an occupational safety and health (OSHA) standard or a failure to comply with an OSHA citation, order, or injunction. The Injured Workers' Insurance Fund reports that there were 8,079 reported accidents by State employees in fiscal 1995; 1,514 were more serious injuries. It is unknown how many of these accidents caused a permanent partial disability of 25% or more.

To the extent that injured employees sue the State, as provided by this bill, litigation costs and resulting awards would increase State expenditures. The Maryland Tort Claims Act provides that the liability of the State and its units may not exceed \$100,000 to a single claimant for injuries arising from a single incident or occurrence. The actual amount of State expenditures would depend on the number of suits and the judgements awarded.

In addition, injured employees may be instructed by their attorneys to file a complaint with the Maryland Occupational Safety and Health (MOSH) program in hopes that MOSH will conclude that the injury was the result of an OSHA violation. In fiscal 1995, the Workers' Compensation Commission issued 52,582 permanent partial disability awards, of which 14,321 were for disabilities of 25% or more. It is unknown how many of these injuries could be related to a violation of OSHA standards or how many employees would file a complaint with MOSH.

In fiscal 1995, MOSH conducted 127 accident investigations, which represents less than 1% of all permanent partial disabilities of 25% or more awarded by the Workers' Compensation Commission. Based on this, the Department of Fiscal Services advises that MOSH would require additional investigators or would need to redistribute its inspection resources to address complaints rather than routine safety inspections. If the State does hire additional MOSH investigators, general fund expenditures would increase.

Local Expenditures: This bill could increase local expenditures by exposing local employers to additional litigation and possible awards. A local employer's tort liability limit is \$200,000 to a single claimant for injuries arising from a single incident or occurrence and \$500,000 to all claimants for a single incident or occurrence. The actual amount would depend on the number of suits and the judgements awarded.

Information Source(s): Injured Workers' Insurance Fund; Department of Labor, Licensing, and Regulation; Department of Fiscal Services

Fiscal Note History: First Reader - March 5, 1996

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