SB 413

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 413 (Senator Garagiola)
Finance

Workers' Compensation - Temporary Total Disability Benefits - Termination

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This bill specifies that an employer or its insurer may not terminate the payment of a covered employee's temporary total disability (TTD) benefits while the employee is determined to be temporarily totally disabled by the employee's treating physician, unless the Workers' Compensation Commission (WCC) has ordered the termination.

If WCC orders a termination date that is earlier than the actual date that the employee's TTD benefits were terminated by the employer or its insurer, WCC must order that the employer or insurer receive an offset or credit in the manner specified in statute.

Fiscal Summary

State Effect: State expenditures increase significantly (all funds) due to increased payments of TTD benefits and litigation expenses for additional hearings at WCC. Significant operational impact on WCC due to a marked increase in the number of TTD cases heard by the agency. Revenues are not affected.

Injured Workers' Insurance Fund (IWIF) Effect: Significant increase in IWIF expenditures due to increased payments of TTD benefits and litigation expenses for additional hearings at WCC. IWIF revenues are not affected.

Local Effect: Significant increase in expenditures for local governments that are self-insured for employee workers' compensation coverage; expenditures increase due to additional TTD benefit payments. Local government revenues are not affected.

Small Business Effect: Meaningful due to increased workers' compensation insurance costs.

Analysis

Current Law: A covered employee who is temporarily totally disabled due to an accidental personal injury or an occupational disease may file a claim for workers' compensation payments. The employer, or its insurer, must pay the employee compensation that equals two-thirds of his or her average weekly wage. However, the payment may not be more than the average weekly wage of the State or less than $50. The payments continue throughout the period that the employee is temporarily totally disabled. According to WCC, the 2011 average weekly wage is $940.

If an employee's injury has resulted in a disability that temporarily prevents an employee from returning to work – that is, the employee is completely disabled for all work purposes – then the employee may receive TTD payments. The period of time when an employee is considered temporarily totally disabled is frequently referred to as the "healing period." If the period of disability is 14 days or less, compensation may not be allowed for the first 3 days of disablement, except for nonwage or medical benefits. If the period of temporary disability lasts for more than 14 days, compensation is allowed from the date of disability.

TDD benefits are intended to replace the income being lost, at least in part, during the interval when the injured employee cannot work at all. The benefit is terminated when, during the process of treatment and recovery, the point is reached where the employee is no longer totally disabled – that is, the employee can return to work in some capacity – or if a medical determination is made that the employee has reached maximum medical improvement, even if the employee has not returned to pre-injury condition. The employee could then be eligible for permanency benefits.

The Maryland Court of Appeals held that, without authorization by the General Assembly, an employer may not receive a credit for overpayment of a TTD award, either directly or as an offset against a permanent partial disability award. *Sealy Furniture of Maryland v. Miller*, 356 Md. 462 (1999). Subsequently, Chapter 230 of 2000 was enacted specifying that WCC may order an offset or credit against a covered employee's award for permanent partial disability benefits for any TTD benefits previously paid to a covered employee.

Except as specified in law, an employer or its insurer must give the claimant written notice of the date that TTD benefits will be terminated. Written notice must state (1) the reasons for termination; (2) that the covered employee has a right to request a hearing before WCC on the issue of termination; and (3) the procedure for requesting a hearing.

If WCC finds that a person has brought a proceeding without any reasonable ground, WCC must assess the cost of the proceeding against the person, including reasonable attorney's fees.

Background: IWIF administers workers' compensation for the State and provides workers' compensation insurance to firms unable to procure insurance in the private market. IWIF was established in 1914 as the State Accident Fund, part of the State Industrial Accident Commission. In 1941, it became a separate agency and took its current name in 1990. IWIF only writes policies in Maryland and is the exclusive residual workers' compensation insurer in the State. IWIF cannot decline businesses that seek coverage and must adjust rates in response to changing market conditions. In Maryland, IWIF is a major insurer with approximately 25% share of the market.

According to IWIF, an insurance claims adjuster authorizes payment of TTD benefits to a claimant for the period that the employee is temporarily totally disabled. The adjuster may terminate TTD payments if the claimant returns to work to prevent double payment. Similarly, the adjuster may terminate TTD benefits if the claimant (1) is found to be working for another employer; (2) refuses to submit for an independent medical evaluation or is not following a doctor's treatment plan; or (3) is found to be collecting benefits fraudulently. When an adjustor terminates the claimant's benefits, the adjuster is required to document the action with WCC.

State/IWIF/Local Fiscal Effect: The bill allows a claimant to continue receiving TTD benefits unless WCC or the claimant's physician orders termination of benefits. IWIF advises that it is not uncommon for a claim to be terminated for any of the reasons specified above and that some claims may be terminated more than once depending on the circumstances of the claim. In calendar 2010, IWIF terminated about 3,930 claims (this includes termination of TTD claims involving State employees). IWIF advises that in calendar 2010 about 390 terminations were disputed and resulted in a hearing at WCC. IWIF further advises that the bill will result in a significant increase in the number of disputed TTD benefit cases that must be adjudicated by WCC because, under the bill, IWIF cannot terminate benefits and must seek a WCC order in each case where it believes termination is warranted. As a result, IWIF expenditures increase significantly due to (1) the payment of TTD benefits while the parties await a hearing at WCC; and (2) increased litigation costs.

The average wait for a hearing at WCC is 45 days. Under the bill, an employer or its insurer – including the State, IWIF, a self-insured local government, or a private business or its insurer – must pay TTD benefits to a claimant while the parties are awaiting a hearing at WCC. IWIF advises that the average claimant is paid roughly $3,220 in TTD benefits over a 45-day period. Thus, each claim that may be justifiably terminated by an employer or its insurer increases by roughly this amount due to the bill (assuming a 45-day waiting period).

Based on the ratio of State to IWIF claims (roughly 20%), Legislative Services assumes that about 870 IWIF claims involved the State (with IWIF acting as the administrator). The bill substantially changes the process for terminating a claim by requiring the employer or its insurer to seek a termination order from WCC. Legislative Services cannot reliably estimate the number of future TTD termination orders sought due to the bill; however, *for illustrative purposes only*, if an order was required to terminate 435 State claims, one half of the claims terminated in 2010, State expenditures may increase by $1.4 million annually. Similarly, IWIF expenditures may increase by roughly $4.9 million annually due to the need to obtain roughly 1,530 termination orders. These estimates are based on the continued payment of the average TTD benefit per claim over a 45-day waiting period. IWIF advises that expenditures due to the bill may be significantly higher.

The bill specifies that an employer or its insurer must receive a credit against the claimant's permanent partial disability award if WCC determines that the claimant received excess TTD benefits. Legislative Services cannot estimate the extent to which this provision may reduce the additional expenditures created by the bill but assumes any such credits will not significantly reduce the impact of the bill as the credit may only be applied against a permanent partial dependency benefit, which does not exist in every case.

WCC advises that employers or their insurers may be less likely to voluntarily pay TTD benefits after a workplace accident, which is common practice. Instead, employers or their insurers may dispute a TTD benefit claim and seek a hearing at WCC before benefits are awarded. Thus, WCC may experience a significant increase in its workload due to (1) an increase in TTD benefit claim disputes before an award is made; and (2) an increase in hearing requests by employers or their insurers to obtain a termination order. WCC advises that additional staffing may be needed to accommodate the increased workload. Legislative Services cannot estimate the extent of the operational and fiscal impact on WCC but advises that it is significant.

Similar to the effect experienced by the State and IWIF, local governments that are self-insured for workers' compensation are significantly affected by the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 889 (Delegate Barkley, *et al.*) - Economic Matters.

Information Source(s): National Council on Compensation Insurance, Injured Workers' Insurance Fund, Subsequent Injury Fund, Uninsured Employers' Fund, Workers' Compensation Commission, Baltimore City, Montgomery County, Department of Legislative Services

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