Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 805 (Senator Middleton)
Finance

Workers' Compensation - Benefits - Dependency

This bill changes the calculation of benefits paid by employers or insurers to surviving spouses, children, and other dependents to replace income lost when a person dies due to a work-related accident or occupational disease.

The bill does not apply to specified public safety or emergency personnel of a municipal corporation or county in the State. However, a municipal corporation or county may elect to subject these employees to the provisions of the bill.

Fiscal Summary

State Effect: Potential minimal expenditure decrease (all funds) due to a reduction in workers' compensation death benefit payments as a result of the 12-year benefit cap established by the bill. Revenues are not affected.

Injured Workers' Insurance Fund (IWIF) Effect: Potential minimal decrease in IWIF expenditures due to a reduction in workers' compensation death benefit payments. IWIF revenues are not affected.

Local Effect: Potential minimal decrease in local government expenditures due to a reduction in workers' compensation death benefit payments. Local government revenues are not affected.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: Under the bill, benefits are paid to surviving dependent spouses and children proportionally to reflect family income. The bill retains the current statutory distinction between wholly and partially dependent spouses and children only for specified public safety and emergency personnel employed with local governments.

Calculation of Weekly Benefits

The actual amount of benefits received by the dependents of a covered employee is based on several factors, including the average weekly wage of the deceased and the percentage of the total earnings the deceased person contributed to the family income. The amount of benefits that may be paid to the dependents of a deceased employee cannot exceed the State average weekly wage or two-thirds of the employee's actual average weekly wage. An employee's average weekly wage is based on the employee's salary at the date of (1) disablement (in the case of occupational diseases); or (2) the work-related accident that resulted in the employee's death.

Duration of Benefits

In general, surviving dependent spouses and children receive their calculated benefits for at least 5 years and up to 12 years (624 weeks). There are several exceptions, as listed below:

- all dependent benefits terminate on the date the deceased would have reached 70 years of age, if five years of benefits have been paid;
- surviving spouses who remarry may only collect benefits for two years after the date of remarriage;
- any dependents with a disability that predates the death of the deceased are paid benefits for the duration of the disability;
- all children of the deceased are paid benefits until they reach 18 years of age; and
- children who are enrolled in approved or accredited academic programs may continue to receive benefits after age 18 – for up to five additional years.

Benefits for Other Dependents

Persons who are not spouses or children of the deceased may still be dependents under the bill, but they are not entitled to the same total amount of benefits as spouses or children. While their weekly benefits are calculated in the same manner as surviving dependent spouses and children, all nonspouse, nonchild dependents are subject to a benefit cap of $65,000 collectively. Beginning on January 1, 2012, this benefit limit must be adjusted annually by the same percentage as the adjustment of the State average weekly wage.

Other Provisions

The Workers' Compensation Commission (WCC) is authorized to determine the dependency of an employee's child born after (1) the occurrence of the accidental injury that caused the employee's death; (2) the date of disablement from the occupational disease that caused the employee's death; or (3) the death of the employee that resulted from an accidental injury or occupational disease.

The bill exempts certain public safety and emergency personnel employed with a county or municipal corporation. In the event that such an employee dies on the job, or as the result of an occupational disease, benefits paid to the dependents of these employees are based on the death benefit provisions currently set in statute. However, a county or municipal corporation in the State may elect to subject these employees, and their dependents, to the bill's provisions. To do so a county or municipal corporation must adopt a resolution or ordinance reflecting that election and forward a copy of the ordinance or resolution to WCC. Once WCC has received the resolution or ordinance, all future claims for death benefits involving an employee of that municipal corporation or county are subject to the bill's provisions. A municipal corporation or county may not undo its election to forgo its exemption to the bill's provisions.

For exempted public safety and emergency personnel, The bill maintains the provision specifying that persons are not entitled to benefits if they became dependent on the employee after the employee's first compensable disability resulting from an occupational disease. For all other covered employees, the provision no longer applies.

The bill also increases the allowance for funeral benefits from $5,000 to $7,000.

Current Law: Surviving dependent spouses and children are categorized based on their level of dependency. A dependent spouse or child can be classified as either (1) wholly dependent – having no substantial and reasonably regular income from any source other than the deceased; or (2) partially dependent – having any substantial and reasonably regular income from any source other than the deceased.

Although wholly dependent individuals are subject to a $45,000 cap, such dependent spouses receive benefits indefinitely if they remain wholly dependent. Thus, wholly dependent spouses can actually receive lifetime benefits. The maximum weekly benefit for wholly dependent individuals is up to two-thirds of the average weekly wage of the deceased, but no more than the State average weekly wage. The State average weekly wage for calendar 2011 is $940.

Partially dependent spouses, children, or other dependents may not receive more than $75,000 in benefits. Chapters 616 and 617 of 2009 increased the maximum workers' compensation payment to partially dependent or partially self-supporting individuals from $60,000 to $75,000. The maximum weekly benefit for partially dependent individuals is up to two-thirds of the average weekly wage of the deceased employee not to exceed two-thirds of the State average weekly wage. The weekly benefit payable is the percentage of the maximum weekly benefit that the deceased employee contributed to the combined earnings of the deceased employee and the partial dependent. For example, if a deceased employee earned $650 per week and a partial dependent earned $350 per week for combined earnings of $1,000, the deceased earned 65% of the combined earnings. Thus, the benefit would be 65% of $650, or $423. If the deceased earned $800 and the dependent $200, the benefit would be two-thirds of the State average weekly wage of $940, or $627, because 80% of $800 ($640) exceeds the maximum allowable benefit.

Background: IWIF advises that, because wholly dependent spouses and children are entitled to benefits for the period of their dependency under current law, some may receive benefits for several decades (for the remainder of the life of the dependent); in many cases the total benefit IWIF anticipates paying is nearly $2 million. Under the bill, IWIF's maximum exposure, based on its current caseload, is about $529,000 per case.

Each year there are about 33 deaths resulting from work-related injuries in the State.

Benefit Calculation Scenarios

The examples included below clarify how benefits may be administered under the bill.

Scenario One: The deceased employee is the family's sole wage earner.

An employee, who is married and has two dependent children, dies in a work-related accident. The deceased earned $900 per week. None of the dependents contribute to the family income. Therefore, benefits are paid to the family for 12 years at the rate of two-thirds of the employee's salary, or $600 per week (duration of benefits depends on if the spouse remarries, when the deceased would have reached age 70, and the ages of the children). If there is any dispute as to how benefits are allocated to the dependents, WCC may determine how benefits are distributed.

Scenario Two: Dependents contribute to the family income.

An employee, who is married and has two dependent children, dies in a work-related accident. The deceased earned $800 per week, the spouse earned $300 per week, and one child earned $200 per week. The deceased earned about 62% of the family income.

The benefit equals two-thirds of the salary of the deceased, multiplied by 62%. Thus, under this scenario, the family receives a weekly benefit of $496 (the duration of benefits depends on if the spouse remarries, when the deceased would have reached age 70, and the ages of the children). WCC may determine that some of the dependents, particularly the nonworking child, are entitled to a higher percentage of the weekly benefits than the dependents who are employed.

Scenario Three: Nonspouse, nonchild dependents.

An employee who earns $750 per week dies in a work-related accident. The employee has no spouse or children but has one dependent, who does not work. The dependent is entitled to a weekly benefit of $500. In this scenario, benefits terminate in two and a half years when the total amount of paid benefits reaches the $65,000 cap.

Workgroup to Study Death Benefit Provisions

Chapters 616 and 617 of 2009 also required WCC to form a workgroup to study the statutory provisions related to death benefit payments to dependent individuals. The bill reflects the workgroup's findings and recommendations, which were reported to the Senate Finance Committee and House Economic Matters Committee in December 2009.

Part of the impetus for studying the State's death benefit provisions resulted from the perceived inequity of the provision of benefits following the death of two workers in a Western Maryland mining accident in 2008. Each miner left behind a dependent spouse. Because one of the spouses had a part-time job and earned a small income, her benefits were capped at $60,000; the spouse who did not work was entitled to lifetime benefits (assuming her dependency status did not change).

Local Government Public Safety Personnel – Occupational Disease Presumptions

The bill specifies that specified local government employees, namely public safety personnel, are not subject to the death benefit provisions established by the bill. The exempted personnel are eligible to receive benefits for an occupational disease. Workers' compensation law establishes a presumption of compensable occupational disease for certain public employees who are exposed to unusual hazards in the course of their employment.

State/IWIF Fiscal Effect: *For illustrative purposes only*, IWIF, which acts as the third-party administrator for the State and an insurer of private-sector businesses, compiled information regarding its cases over the past 10 years where death benefits were paid. According to an IWIF analysis of 72 of the 91 cases (19 cases were removed because of unreliable, missing, or inconsistent data) where death benefits were paid, the total IWIF benefit payments for this group under current law is $27,146,970 or $377,040 per case. IWIF advises that, to recognize the time value of money for lifetime cases, the adjusted total benefits paid or held in reserve under current law is $20,376,250.

Under the bill, the total paid or reserved for these 72 cases would have been $18,387,460 or an average of $255,380 per case. Therefore, the bill may reduce expenditures in death benefit cases minimally – by approximately $166,000 per year or by about $2 million over 12 years. In addition to the potential decrease due to the bill as a result of the 12-year benefit limit, benefits are further reduced to reflect the deceased employee's contribution to the family income. Data are not available to project the extent of that effect.

While lifetime benefits may still be awarded under the bill, Legislative Services assumes that this exception occurs in very few cases due to the more restrictive criteria in the bill for cases where a dependent spouse or child is incapable of self-support due to a mental or physical disability.

Local Fiscal Effect: Work-related deaths are uncommon among governmental employees who are not public safety or emergency personnel. Because the bill exempts the local government employees who have the highest risk of dying in a work-related accident or as the result of an occupational disease, the bill likely results in a minimal decrease in expenditures similar to the effect experienced by the State and IWIF. Legislative Services cannot determine the effect on local governments that elect to opt out of their exemption to the bill's provisions.

Additional Comments: Although not specified by the bill, Legislative Services assumes that the bill applies prospectively to any claims filed on or after the bill's October 1, 2011 effective date or to cases currently awaiting disposition.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): National Council on Compensation Insurance; Carroll, Cecil, and Harford counties; Towns of Bel Air and Leonardtown; City of Salisbury; Injured Workers' Insurance Fund; Subsequent Injury Fund; Uninsured Employers' Fund; Workers' Compensation Commission; Department of Budget and Management; Department of Natural Resources; Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

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