HB 504

Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 504 (Delegate Clippinger)
Economic Matters

Workers' Compensation - Permanent Partial Disability Compensation - Reversal or Modification of Award

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This bill specifies that, if a workers' compensation award of permanent partial disability is reversed or modified by the Workers' Compensation Commission (WCC) or a court on appeal, the payment of any new compensation awarded must be subject to a monetary credit for compensation previously awarded and paid.

The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect or application to any compensation award made prior to the bill's October 1, 2016 effective date.

Fiscal Summary

State Effect: State expenditures (all funds) increase, potentially significantly, to the extent that injured State employees receiving workers' compensation benefits have their cases reopened and modified by WCC due to worsening of condition.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures increase, potentially significantly, to the extent that injured employees receiving workers' compensation benefits from Chesapeake have their cases reopened and modified by WCC due to worsening of condition.

Local Effect: County and municipality expenditures increase, potentially significantly, to the extent that injured employees receiving workers' compensation benefits have their cases reopened and modified by WCC due to worsening of condition.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Maryland Workers' Compensation Law

Permanent partial disability claims are the most common type of workers' compensation case and can be caused by work-related injuries or occupational diseases. A permanent partial disability means that some sort of impairment exists, which makes a worker unable to perform his or her normal job duties at full capacity. Common examples of this type of injury include amputation of a body part, hearing loss, or knee injuries.

Maryland Workers' Compensation Law specifies the length of compensation (in weeks) for permanent partial disability awards based on the type of injury that has occurred. Furthermore, depending on how long a compensation award lasts, the injured employee is entitled to a specified percentage of his or her weekly salary; however, this amount may not exceed a specified percentage of the State average weekly wage (which is also dependent on how long the compensation award lasts).

For example, compensation benefits that are awarded for less than 75 weeks are considered "first tier benefits." An employee who receives first tier benefits is entitled to weekly compensation that equals one-third of his or her average weekly wage over the entire period, but the total amount may not exceed 16.7% of the State average weekly wage ($172 in 2016). For 2016, the State average weekly wage is $1,027. Compensation benefits that are awarded for at least 75 weeks and less than 250 weeks are considered "second tier benefits." An employee who receives second tier benefits is entitled to weekly compensation that equals two-thirds of his or her average weekly wage over the entire period, but the total amount may not exceed one-third of the State average weekly wage ($343 in 2016).

Recent Judicial Decisions

Section 9-633 of the Labor and Employment Article specifies that, if a workers' compensation award of permanent partial disability is reversed or modified by a court on appeal, the payment of any new compensation awarded must be subject to a credit for compensation previously awarded and paid. In July 2014, the Court of Appeals released a consolidated opinion for three recent cases related to this provision. In *W. R. Grace & Co., et al. v. Andrew P. Swedo, Jr.*, No. 82, September Term 2013; *Florida Rock Industries, Inc., et al. v. Jeffrey P. Owens*, No. 91, September Term 2013; and *Robert W. Coffee v. Rent-A-Center, Inc., et al.*, No. 92, September Term 2013 (Opinion filed July 22, 2014), awards of permanent partial disability were modified and extended by the court such that each employee was entitled to a higher weekly benefit amount.

The employers/insurers argued that these modifications should apply prospectively and that crediting should be done based on the total number of weeks that an employee has received compensation, citing *Del Marr v. Montgomery County,* No. 60, September Term 2006. In *Del Marr*, the court held that, in the event that a workers' compensation case is reopened by WCC and benefits are modified due to worsening of condition (which is governed by Section 9-736 of the Labor and Employment Article), credits should be based on weeks paid.

The Court of Appeals distinguished *Del Marr* from the case at hand, stating that a reopened case due to worsening of condition and a modification on appeal are two different circumstances. The Court of Appeals held that crediting for payments made under an award amended on appeal should be the basis of the total dollars paid, resulting in backpay to the employees.

State/Chesapeake/Local/Small Business Effect: The bill applies to two distinct situations. The first is when an award is reversed or modified on appeal to the circuit court, and the second is when a case is reopened by WCC due to worsening of condition. There is no fiscal impact in the first situation, as the bill simply codifies the judicial decision in the court's consolidated opinion. However, there is a potentially significant fiscal impact in the second situation. Although the bill does not specify that its monetary credit provision must apply to cases that are modified due to worsening of condition, it clearly states, "If an award of permanent partial disability compensation is reversed or modified by the commission or a court of appeal, the payment of any new compensation awarded shall be subject to a monetary credit for compensation previously awarded and paid." The reopening of a permanent partial disability case due to worsening of condition is a modification made by WCC; thus, the bill applies in that situation.

State, Chesapeake, local, and small business expenditures increase, potentially significantly, to the extent that injured employees have their cases reopened by WCC and modifications are made due to worsening of condition; however, the volume of such cases in any given year, as well as the corresponding expenditure increase, cannot be reliably estimated at this time.

For context, Chesapeake advises that, in 2014, 228 worsening of condition awards were paid out; this number does not include any worsening of condition cases that were settled. Even so, the bill applies to cases where a worsening of condition claim results in an increase in weekly benefits (for example, from first tier benefits to second tier benefits). Some worsening of condition cases may only result in increased medical claims without moving an injured worker from one weekly benefit tier to another.

Additional Information

Prior Introductions: SB 358 of 2015 received a hearing in the Senate Finance Committee, but no further action was taken. HB 262 of 2015, an identical bill, received an unfavorable report from the House Economic Matters Committee.

Cross File: SB 186 (Senator Klausmeier, *et al.*) - Finance.

Information Source(s): Chesapeake Employer's Insurance Company, Workers' Compensation Commission, Department of Legislative Services

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