

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 995 (Delegate Waldstreicher)  
Economic Matters

---

Workers' Compensation - Covered Employees - Performance of Essential  
Services During State of Emergency

---

This bill establishes that an individual is a covered employee while traveling to and from the performance of mandatory essential services during an emergency if the individual (1) is employed by a unit of State government or a political subdivision in the State and (2) at the request of the employer, provides essential services for the safety, care, and welfare of the people during an emergency declared by the Governor or the mayor, executive, or governing body of a political subdivision. This means the employee is eligible for workers' compensation benefits if an accidental injury occurs while he or she is traveling to or from work under these circumstances.

---

Fiscal Summary

**State Effect:** The bill appears to codify existing case law and, therefore, does not affect State operations or finances.

**Chesapeake Employers' Insurance Company (Chesapeake) Effect:** The bill appears to codify existing case law and, therefore, does not affect Chesapeake operations or finances.

**Local Effect:** The bill appears to codify existing case law and, therefore, does not affect local governmental operations or finances.

**Small Business Effect:** None.

---

## Analysis

### **Current Law/Background:**

#### *Workers' Compensation – Generally*

All employers in Maryland, including the State and local governments, are required to provide workers' compensation coverage for their employees. The cost to the employer varies by industry, and there are approximately 600 industrial classifications.

An injury is covered under workers' compensation if the harm suffered by the covered employee was by an accidental personal injury arising out of and in the course of covered employment. Benefits are paid to injured employees by the employer (if the employee is self-insured) or the employer's workers' compensation insurer. For compensable injuries, workers' compensation benefits include wage replacement, medical treatment, death and funeral costs, and vocational rehabilitation expenses. Wage replacement benefits are based on the employee's average weekly wage and on the type of injury, as prescribed in the statute.

#### *Case Law – Traveling to or Coming from Work*

Maryland case law establishes that an individual is generally not considered a covered employee and, therefore, not eligible for workers' compensation benefits, if an accidental injury takes place when that individual is traveling to or from work. The rule is based on the idea that getting to work is considered to be an employee's own responsibility and ordinarily does not involve advancing the employer's interests.

In the case of *Mulready v. University Research Corp.*, 360 Md. 51, 66, 756 A.2d 575, 583 (2000) (and later refined in *Livering*, 374 Md. at 575, 823 A.2d at 692-93), a positional risk test was established and applies to the coming and going rule. If an injury is not directly connected to an employee's work, such as when the employee is traveling to or from work, the positional risk is used to determine whether a sufficient nexus exists between the injury and the employment such that the injury is deemed to have arisen out of the employment.

#### *Regulations – Work Time*

Regulations, for State employees in the State Personnel Management System, specify that "work time" includes travels to and from work when an employee is recalled to work after he or she has completed the standard work day as well as when an employee is called to work on the employee's scheduled day off if the employee works fewer than eight hours as a result of being called to work. Additionally, "work time" encompasses travels between home and a work site other than the employee's assigned office. While traveling to and

from work in one of these circumstances, an employee is eligible for workers' compensation benefits in the event of an accidental personal injury.

**State/Local/Chesapeake Expenditures:** Chesapeake advises that the situation described by the bill may already be covered under the positional risk test established by Maryland case law. Therefore, the bill seems to codify this existing case law for employees traveling to and from work when they are required to perform mandatory essential services during an emergency.

Additionally, the Department of Budget and Management advises that the bill clarifies existing regulations related to when travel time to and from work is considered work time. During an emergency, an employee is likely to be recalled to work or called to work on his or her day off. For an employee traveling to work to perform emergency services during standard work hours, the bill clarifies that the employee would be eligible for workers' compensation benefits in the event of an accidental personal injury.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Budget and Management; Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2017  
md/ljm

---

Analysis by: Richard L. Duncan

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510