SB 425

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 425 (Senator Klausmeier)
Finance

Workers' Compensation - Permanent Partial Disability - Survival of Claim

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This bill establishes a $65,000 cap on the benefits that survive to a claimant's dependents or spouse when an injured worker receiving compensation for a permanent partial disability dies from causes unrelated to the workers' compensation claim.

The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on, or application to, any claims arising before the bill's October 1, 2017 effective date.

Fiscal Summary

State Effect: State expenditures (all funds) decrease due to the benefit limit established by the bill; however, the timing and magnitude of any applicable claim cannot be predicted, as discussed below. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures decrease due to the benefit limit established by the bill; however, the timing and magnitude of any applicable claim cannot be predicted, as discussed below. Revenues are not materially affected.

Local Effect: Local expenditures decrease due to the benefit limit established by the bill; however, the timing and magnitude of any applicable claim cannot be predicted, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful. Small business expenditures decrease, due to the benefit limit established by the bill; however, the timing and magnitude of any applicable claim cannot be predicted, as discussed below. Revenues are not affected.

Analysis

Current Law/Background: A case related to the survivorship of permanent partial disability and permanent total disability claims was recently deliberated by the Court of Appeals in *Hollingsworth v. Severstal Sparrows Point, LLC*, 448 Md. 648 (2016). In the case, the court decided whether § 9-632 or § 9-640 of the Labor and Employment Article applies when an injured worker who is receiving benefits for a permanent total disability from both his or her employer (for a compensable workplace injury) and the Subsequent Injury Fund (SIF) (for preexisting conditions) dies from a cause that is not related to the claim. Section 9-632 of the Labor and Employment Article requires that, for an award of *permanent partial disability*, if a covered employee dies from a cause that is not related to the claim, the right to compensation that is unpaid on the date of death survives to the employee's surviving dependents or spouse. Section 9-640 of the Labor and Employment Article requires that such benefits survive for an award of *permanent total disability*; however, § 9-640 also limits the total benefit that may survive to at most $45,000, inclusive of any compensation already paid prior to the death. The $45,000 cap was established by Chapter 671 of 1973. The differences between the two sections of law and the bill's changes are summarized in **Exhibit 1**.

In the case, the Workers' Compensation Commission (WCC) found that Hollingsworth was permanently totally disabled due to injuries sustained both from a compensable workplace accident and his preexisting conditions. The award, which was decided in November 2013, found that (1) 65% of the permanent disability was due to the workplace injury and, therefore, covered by the employer and (2) 35% was due to the preexisting conditions and, therefore, covered by SIF. Hollingsworth was awarded compensation at the rate of $798 per week, not to exceed a sum total of $345,534; however, in July 2014, Hollingsworth died from causes unrelated to the accidental injury. At the time of his death, Hollingsworth had received about $52,166 in total compensation.

Even though the compensable injury only caused a portion of the total disability, with Hollingsworth's preexisting conditions causing the other portion of the total disability that made up the whole, WCC decided that § 9-640 applied because the award was for a permanent total disability and, therefore, Hollingsworth's benefits had already met the $45,000 maximum. In its decision, the Court of Appeals agreed with WCC's decision.

Exhibit 1
Differences in § 9-632 and § 9-640 of the Labor and Employment Article

Section 9-632	**Section 9-640**
• Governs survivorship for an award of permanent partial disability	• Governs survivorship for an award of permanent total disability
• Does not limit benefits payable to survivors if the claimant dies from a cause unrelated to the compensation claim	• Limits to $45,000 the benefits payable to survivors, inclusive of any amount already paid to the claimant and regardless of the cause for the claim, if the claimant dies from a cause unrelated to the compensation claim
• *The bill* establishes a $65,000 limit on benefits payable to survivors	• *The bill* makes no changes to permanent total disability claims and awards

Source: Department of Legislative Services

Although the bill does not directly address the decision of the court, it establishes a $65,000 cap on survivable benefits for a permanent partial disability claim.

State/Chesapeake/Local/Small Business Expenditures: Chesapeake advises that, in 2016, it had 35 permanent partial disability awards where the award was over the $65,000 limit established by the bill. However, there is no way to predict whether any of these injured workers will die from a cause unrelated to the accidental injury or occupational disease because there is no historic data currently available related to the cause of death for employees receiving permanent partial disability benefits. Without historic data on which to base an out-year estimate, the precise effect of the bill on an employer or its insurer (including the State, Chesapeake, local governments, and small businesses) cannot be reliably estimated.

Even so, the bill's impact may be significant when the bill's benefit limit is applied because permanent partial disability claims are more common than permanent total disability claims, and even one case could result in a significant reduction in expenditures for an employer. *For illustrative purposes only*, Chesapeake advises that the average maximum benefit of the 35 permanent partial disability awards was about $167,000. If one of the claimants were to die from causes unrelated to his or her claim, the $65,000 limit established by the bill could reduce expenditures by as much as $102,000 over what would have been the lifetime of the claim, assuming no payments had yet been made. Conversely, if a claimant dies having received $50,000 under the claim, the survivors only receive $65,000 of the remaining $117,000 still payable, resulting in a savings of $52,000 for the employer.

Additional Comments: Because the limit in the bill is expressed differently than the limit that currently applies to permanent total disability claims, it is unclear whether the $65,000 is the maximum amount that may be paid to survivors, regardless of how much the claimant received prior to death, or whether it is the maximum amount that may be paid to survivors, inclusive of any amount already paid to the claimant prior to death. This analysis assumes the former.

Additional Information

Prior Introductions: None.

Cross File: HB 1293 (Delegate Valderrama) - Economic Matters.

Information Source(s): Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Department of Legislative Services

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