HB 484

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 484 (Delegate Morales, *et al.*)
Economic Matters

Workers' Compensation - Average Weekly Wage - Multiple Employers

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This bill alters how an employee's average weekly wage is calculated for the purposes of workers' compensation benefits when he or she is concurrently employed by more than one employer at the time of an accidental personal injury that causes the employee to be unable to work any of his or her jobs. Under this circumstance, the employee's weekly wages from all jobs must be combined to determine the average.

Fiscal Summary

State Effect: Special fund expenditures by the Subsequent Injury Fund (SIF) increase, potentially significantly, to pay the additional compensation benefits. State expenditures (all funds) increase as higher SIF assessments are paid. SIF special fund revenues increase from additional assessments paid by employers and insurers; however, the increased revenues only offset a small percentage of the increased expenditures.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures increase as additional payments are made to SIF through assessments. Because SIF is required to reimburse employers and insurers for the additional payment, the bill is not expected to otherwise materially affect Chesapeake operations or finances.

Local Effect: Local government expenditures increase as additional payments are made to SIF through assessments. Because SIF is required to reimburse employers for the additional payment, the bill is not expected to otherwise materially affect local operations or finances.

Small Business Effect: Minimal, as discussed below.

Analysis

Current Law: 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 statute; however, in all cases, an employee's weekly benefits may not exceed a certain percentage of the State average weekly wage. For example, an employee who is awarded compensation for a permanent partial disability for a period less than 75 weeks (one of the most common types of awards) is eligible to receive weekly benefits of one-third of his or her average weekly wage, but that amount may not exceed 16.7% of the State average weekly wage. The State average weekly wage for 2018 is $1,094.

In general, the average weekly wage must be computed by determining the average of the weekly wages of the covered employee (1) when the employee is working full time and (2) at the time of the employee's accidental personal injury or last injurious exposure to the hazards of an occupational disease. For purposes of this computation, wages include tips as well as the reasonable value of housing, lodging, meals, rent, and other similar advantages that the employee received from the employer.

The average weekly wage may be calculated differently when an employee (1) is working multiple jobs at the time of an accidental personal injury; (2) an accidental personal injury occurs at a job where the employee is working 20 hours per week or less; and (3) as a result of the injury, the employee is unable to work at any employment. Under these circumstances, the employee's average weekly wage is calculated based on the job where he or she earns the most money, regardless of where the compensable injury occurred. Even so, the employer of the job where the injury occurred is still required to pay the wage replacement benefits. The employer is then reimbursed for the difference by SIF. For example, if an employer is required to pay weekly benefits of $180 instead of $160 due to the employee's other job, SIF reimburses the employer for the additional $20 per week. This calculation may not be interpreted to require the employee's wages be combined to determine the average weekly wage.

The Workers' Compensation Commission is statutorily required to impose an assessment of 6.5% payable to SIF against an employer, its insurer, or the Property and Casualty Guaranty Corporation, on all compensation awards for permanent disability or death as well as each amount payable under a settlement agreement approved by the commission. This payment is in addition to any payment of compensation to a covered employee. This is the sole mechanism for funding SIF, and it pays for both workers' compensation claims and SIF administrative costs.

Background: For fiscal 2017, SIF had a year-end fund balance of $90.7 million. In that same year, SIF collected $27.6 million in assessments and paid $19.9 million in benefits.

States that combine wages from multiple employers when determining workers' compensation wage replacement benefits in a manner similar to that proposed by the bill include Connecticut, Florida, Georgia, Montana, New York, and Texas.

State Fiscal Effect: The bill increases compensation benefits for an employee who works multiple jobs, which likely results in increased expenditures for workers' compensation insurance and benefit payments across all employers in the State; however, SIF is required to reimburse employers for any additional payments under the bill. Therefore, SIF expenditures increase, potentially significantly, as SIF reimburses employers for the increased benefits. Other State expenditures increase minimally as agencies pay increased assessments. SIF revenues increase from these and other assessments; however, this revenue is only expected to offset a small percentage of the additional expenditures.

Other State expenditures increase as higher benefits are paid; however, because SIF is required to reimburse the State for the increase, this impact is not discussed in this fiscal and policy note.

The total effect on SIF finances depends on a number of factors and cannot be reliably estimated at this time. Specifically, the total effect depends on (1) the number of employees who work multiple jobs in the State; (2) the prevalence of compensable injuries among such employees; and (3) whether such employees would be at the weekly compensation benefit cap under current law.

The total impact is further complicated because, even though an employee's average weekly wage is increased when that employee works multiple jobs, the bill does not change the weekly benefit cap that is set as a percentage of the State average weekly wage. In general, the higher an employee's wages, the more likely the State cap is to control the benefit amount, both under the bill and under current law. Because of this, the bill does not affect the compensation benefits of every employee who experiences a compensable injury and works multiple jobs; it only affects an employee if his or her weekly benefits do not meet the cap under current law. Accordingly, the bill is most likely to increase benefits for low-wage employees who work multiple jobs. This principle is demonstrated through the illustrative scenario below.

Two injured employees are both awarded compensation for a permanent partial disability for 50 weeks, meaning they both are entitled to receive weekly benefits of one-third their average weekly wage, but that amount may not exceed 16.7% of the State average weekly wage, which amounts to $183. Employee A works two jobs and makes $400 a week at the first job and $300 a week at the second job. Employee B works two jobs and makes $1,000 a week at the first job and $300 a week at the second job. Both employees are injured on the job where they make $300 per week.

- Under current law, Employee A's average weekly wage is calculated using the job where he receives higher wages, meaning that he is entitled to one-third of $400. Therefore, his weekly benefit is $133.
- Under current law, Employee B's average weekly wage is calculated using the job where he receives higher wages, meaning that he is entitled to one-third of $1,000. However, because this total ($333) is greater than the cap of $183, his weekly benefit is only $183.
- Under the bill, Employee A's average weekly wage is calculated by combining his wages from both jobs, meaning that he is entitled to one-third of $700 ($400 + $300). However, because this total ($233) is greater than the cap of $183, his weekly benefit only increases by $50 under the bill, to $183.
- Under the bill, Employee B's average weekly wage is calculated by combing his wages from both jobs, meaning that he is entitled to one-third of $1,300 ($1,000 + $300). However, his weekly benefit is unchanged because this total ($433) still exceeds the cap of $183.

Chesapeake Effect: Chesapeake expenditures increase as higher benefits are paid; however, because SIF is required to reimburse insurers and employers for the increase, this impact is not discussed in this fiscal and policy note. SIF is not required to reimburse insurers and employers for any additional assessments to SIF; therefore, Chesapeake expenditures do increase as these assessments are paid.

Local Fiscal Effect: Local government expenditures increase as higher benefits are paid; however, because SIF is required to reimburse local governments for the increase, this impact is not discussed in this fiscal and policy note. SIF is not required to reimburse insurers and employers for any additional assessments to SIF; therefore, local government expenditures do increase as these assessments are paid.

Small Business Effect: As previously discussed, the bill is most likely to affect employers that pay minimum or low wages and whose employees are likely to have second jobs that also pay minimum or low wages. To the extent that these businesses are small businesses, benefit payments increase as workers' compensation benefits are calculated at a higher rate. Because SIF is required to reimburse employers for the increased benefits, the bill is likely to have only a minimal effect on small businesses. SIF is not required to reimburse insurers and employers for any additional assessments to SIF; therefore, small business expenditures do increase as these assessments are paid.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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