

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 784
Finance

(Senator Klausmeier)

Economic Matters

Workers' Compensation - Hernia Claims

This bill increases the time limit, from 30 days to 45 days, within which an employee has to *report* an accidental personal injury or strain that causes or exacerbates a preexisting hernia in order to ensure receipt of workers' compensation benefits for the hernia. The bill also allows an employee to file a workers' compensation *claim* for a hernia up to two years after the injury or strain occurred unless the employer or its insurer has been prejudiced by the failure to do so. The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any claim arising from events occurring before the bill's October 1, 2020 effective date.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances, as discussed below.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: The bill is not anticipated to materially affect Chesapeake operations or finances, as discussed below.

Local Effect: The bill is not anticipated to materially affect local governmental operations or finances, as discussed below.

Small Business Effect: Minimal.

Analysis

Current Law:

Workers' Compensation – Generally

If an employee covered under workers' compensation insurance has suffered an accidental personal injury, compensable hernia, or occupational disease, the employee is entitled to compensation benefits paid by the employer, its insurer, the Subsequent Injury Fund, or the Uninsured Employers' Fund, as appropriate. Workers' compensation benefits include wage replacement, medical treatment, and vocational rehabilitation expenses. Wage replacement benefits are calculated based on the covered employee's average weekly wage while medical benefits are generally fully or partially covered depending on how the treatment is related to the personal injury, hernia, or occupational disease.

If a covered accident or occupational disease results in the death of the covered employee, then the employee's dependents are entitled to workers' compensation death and funeral benefits. Similar to wage replacement benefits, death benefits are calculated using the covered employee's average weekly wage. The duration of benefits and total benefits allowed depend on if the dependents were partially or wholly dependent on the covered employee, among other factors.

Workers' Compensation – Claim Filing and Hernias

Generally, a covered employee that suffers an accidental personal injury must file a claim with the Workers' Compensation Commission (WCC) within 60 days of the injury. Failure to do so bars a compensation claim, unless the failure is excused by WCC. Even if excused, a covered employee has to file a claim within two years after the injury or the claim is completely barred.

An employer must provide workers' compensation benefits to a covered employee for a hernia caused by an accidental personal injury or by a strain arising out of and in the course of employment if (1) the covered employee provides definite proof that the hernia either did not exist prior to the injury or strain or, as a result of the injury or strain, a preexisting hernia requires an immediate operation and (2) the injury or strain was reported to the employer within 30 days after it occurred.

Background: According to the National Institutes of Health (NIH), a [hernia](#) occurs when an internal organ or tissue bulges through a weak area of muscle. Hernias are a relatively common injury that affects men, women, and children; a combination of muscle weakness and straining, such as with heavy lifting, contributes to these types of injuries. Most hernias occur in the abdomen, with the inguinal hernia (in the groin area) being the most common.

NIH advises that treatment is usually surgery to repair the opening in the muscle wall and that untreated hernias can cause pain and other health problems.

State/Chesapeake/Local/Small Business Effect: The bill is not anticipated to materially affect workers' compensation costs for the State, Chesapeake, local governments, or small businesses for two primary reasons.

First, hernia-related claims are relatively rare in the State compared to other types of claims. Chesapeake advises that, in fiscal 2019, there were 22 such claims (which includes State employee claims). Chesapeake administers the State's self-insurance program and provides workers' compensation insurance to many local governments and small businesses; thus, its experience is likely indicative of broader trends throughout the State. Second, the timing for an injured employee to report the injury for a hernia claim, which is being expanded by the bill, is not generally an issue when claims are denied. Although 9 of Chesapeake's 22 hernia-related claims in fiscal 2019 were ultimately denied, none was denied for any reason related to when the injury that caused the hernia was reported.

Therefore, expanding the amount of time a covered employee has to report an injury or strain that results in or exacerbates a preexisting hernia is not anticipated to materially affect employer and insurer operations or finances.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 1, 2020
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