

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 438
Finance

(Senator Klausmeier)

Workers' Compensation Act - Death Benefits - Release of Claim

This bill specifies that a dependent of a covered employee who dies from an accidental personal injury or occupational disease *is not* entitled to workers' compensation death benefits *if* the covered employee has signed a final compromise and settlement agreement. The bill also requires the Workers' Compensation Commission (WCC) to develop a procedure that allows a dependent of a covered employee to agree to (1) the application of a final compromise and settlement agreement entered into by a covered employee to the dependent and (2) the release of any future death benefits by the dependent as part of that agreement. **The bill takes effect July 1, 2020, and may not be interpreted to have any effect on or application to any agreement entered into before that date.**

Fiscal Summary

State Effect: State expenditures for workers' compensation death benefits may be affected, as discussed below. WCC can develop and implement the procedure specified by the bill using existing budgeted resources. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures for workers' compensation funeral benefits may be affected, as discussed below. Revenues are not affected.

Local Effect: Local expenditures for workers' compensation death benefits may be affected, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: 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 including 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.

Background: The bill addresses an issue raised in the recent Court of Special Appeals decision for "*In the Matter of Bernard Collins*, No. 591, September Term, 2018." In that case, the covered employee agreed to settle a workers' compensation claim with his employer and its insurer. The settlement included an immediate payment of disability benefits and long-term payment for certain medical expenses. The covered employee signed a release to certify the settlement; however, no such release was signed by his dependent spouse. Two years after the settlement, the covered employee died from the occupational disease on which the initial workers' compensation claim was based. His wife then filed a claim for death benefits under Workers' Compensation Law, but WCC ruled that her claim was barred by the release signed by her husband when he settled his claim.

The Court of Special Appeals reversed the decision of WCC, holding that a covered employee's settlement and release does not bar a dependent spouse's claim for death benefits. The court held that the employee's claim for disability, medical, and vocational compensation is distinct and separate from his dependent's claim for death benefits, and that a dependent's claim for death benefits is not derivative of the covered employee's claim for compensation. Chesapeake advises that the case has been appealed and is currently scheduled for oral arguments before the Maryland Court of Appeals on Monday, February 10, 2020.

State/Chesapeake/Local/Small Business Effect: As discussed above, the case being addressed by the bill has been appealed, and the bill's effect largely depends on how the case is ultimately decided by the Court of Special Appeals. If that decision is reversed, the

bill simply codifies what had been the practice in such cases and there is no additional fiscal or operational impact on employers. Conversely, if the court stays the decision, the bill reduces workers' compensation costs for employers and insurers (including the State, Chesapeake, local governments, and small businesses) in situations where a claimant agrees to a settlement and later dies from the injury or occupational disease that caused the workers' compensation claim. As shown in **Exhibit 1**, workers' compensation-related fatalities are relatively rare, and cases where a settlement is agreed to by a claimant who later dies are likely a small subset of those fatalities. As such, the bill's impact is likely to, overall, be negligible or minimal for most entities.

Exhibit 1
Workers' Compensation Fatalities
Fiscal 2015-2019

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Private Sector	46	29	31	25	43
State Government	2	1	4	1	1
Local Government	19	16	22	19	19
Total	67	46	57	45	63

Source: Workers' Compensation Commission annual reports, fiscal 2017-2019; Department of Legislative Services

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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mm/ljm

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