

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE

House Bill 368 (Delegate McHale)

Economic Matters

Workers' Compensation - Temporary Total Disability - Secondary Employment

This bill provides that a covered employee is eligible to receive payments for temporary total disability if the employee is temporarily disabled from the duties of the primary employment that gave rise to the injury, regardless of whether the employee engages in secondary employment. To be eligible, the secondary employment: (1) must have commenced prior to the injury; (2) cannot conflict with the work schedule of the primary employment; (3) cannot produce compensation that exceeds the total compensation regularly earned prior to the injury; and (4) must not prolong the disability.

Fiscal Summary

State Effect: Potential increase of up to \$57,800 annually in State workers' compensation expenditures to pay temporary total disability benefits to injured employees who continue to hold secondary employment.

Local Effect: Potential increase in local government workers' compensation expenditures to pay temporary total disability benefits to injured employees who continue to hold secondary employment.

Small Business Effect: Potential minimal.

Analysis

Current Law: Compensation for temporary total disability for employees with an average weekly wage of \$50 or more is two-thirds of the employee's average weekly wage, not to exceed the average weekly wage of the State. For employees whose average weekly wage is less than \$50, the benefit for temporary total disability is the employee's average weekly

wage.

Compensation for temporary partial disability is 50% of the difference between the employee's average weekly wage and the wage earning capacity of the covered employee in the same or other employment while temporarily partially disabled, limited to 50% of the State average weekly wage.

In *Buckler v. Willett Construction*, 345 Md. 350 (1997), the Court of Appeals affirmed its long held interpretation of the Maryland's Workers' Compensation Act and concluded that an employee who continues to work at secondary employment is ineligible for temporary total disability benefits.

State Expenditures: Few, if any, claims for payment of temporary total benefits are presented by workers with secondary employment because most injured workers are aware that working at secondary employment while receiving temporary total benefits is prohibited. The bill authorizes an injured employee to receive temporary total disability while continuing to work at secondary employment.

The Injured Workers' Insurance Fund, which administers the State's workers' compensation claims, paid \$24.7 million in temporary total indemnity benefits during calendar 1999, including \$4.7 million to State employees. For illustrative purposes, if 5%, or \$235,000, of the State's workers' compensation payments were related to employees with secondary employment, and if workers' compensation benefits for these employees increase by 25%, then the total benefits for State employees would increase by \$57,800 per year.

Additional Information

Prior Introductions: Similar bills were introduced in the 1998 session as HB 614 and SB 152. HB 614 received an unfavorable report from the House Economic Matters Committee. SB 152 received an unfavorable report from the Senate Finance Committee.

Cross File: None.

Information Source(s): Injured Workers' Insurance Fund, Subsequent Injury Fund, Uninsured Employers' Fund, Department of Legislative Services

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