SB 543

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 543 (Senator Grosfeld, *et al.*)
Finance

Short-Term Disability for Working Families Act

This bill establishes the Short-Term Disability for Working Families Act to provide limited income support to specified covered employees. The bill provides for specified income surcharges and employer contributions to fund the Short-Term Disability for Working Families Fund. The bill also provides eligibility requirements to receive distributions from the fund and formulas for calculating any distributions. The Workers' Compensation Commission (WCC) may adopt regulations to carry out the provisions of the bill and shall administer the fund and the distribution of benefits.

The bill is effective January 1, 2004.

Fiscal Summary

State Effect: General fund expenditures would increase by $29.6 million in FY 2004 for 500 new positions, creation of the fund, and program start-up costs.

Reliable estimates of special fund revenues from premiums and expenditures for benefit payments are not available. Under one set of assumptions, special fund revenues could approach $323.0 million in FY 2005. Out-year estimates are not possible with the formula for premium rates provided in this bill. Special fund expenditures could approach $325.2 million in FY 2006. Out-year benefit estimates would reflect inflation.

($ in millions)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
SF Revenue	-	-	-	-	-
GF Expenditure	29.6	32.5	34.1	35.8	37.6
SF Expenditure	-	-	-	-	-
Net Effect	($29.6)	($32.5)	($34.1)	($35.8)	($37.6)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Significant impact due to additional leave taken by local jurisdiction employees. Increased leave costs and increased employee retention benefits cannot be reliably estimated.

Small Business Effect: Meaningful impact due to additional leave taken by employees of small businesses. Increased leave costs and increased employee retention benefits cannot be reliably estimated.

Analysis

Bill Summary: This bill creates a program of short-term disability leave in the State that permits specified employees to take leave: (1) to care for a newborn, foster, or newly adopted child within 12 months after the birth of the child, the placement of the child after foster care, or the placement of a child after adoption; (2) to care for a family member who has a serious health condition; or (3) for the covered employee's own serious health condition.

Short-term disability leave benefits are payable for a maximum of 12 weeks in a 52-week period. The bill specifies when payments are to begin. Benefits shall be made twice a month after the first payment. The amount of benefits for claims commencing before January 1, 2005 shall be 55% of a covered employee's salary up to $336 per week. For benefits commencing on or after January 1, 2005, the level shall be 55% of a covered employee's salary or up to the maximum weekly benefit. The maximum weekly benefit is equal to two-thirds the State average weekly wage, as published by the Department of Labor, Licensing, and Regulation (DLLR).

Covered employees are required to pay a 1.81% premium rate in calendar 2004 and 2005 on any salary they receive up to the taxable wage ceiling established in the bill. Premium rates for calendar 2006 and beyond are calculated based on the funds expended by and remaining in the fund on the previous September 30 (September 30, 2005 for the calendar 2006 premium rate).

Employers not covered by this bill or self-employed individuals may elect to participate in the fund under specified circumstances.

The fund is a continuing, nonlapsing fund, administered by the commission and not subject to 7-302 of the State Finance and Procurement Article. The Legislative Auditor will audit the fund. Unspent portions of the fund may not revert or be transferred, and may not be used to fund the operations of any agency of State government. No other State money may be used to support the fund. Benefits are payable only to the extent that funds are available. The State, the commission, and the employer are not liable for any amount in excess of the limits of the fund. This bill grants no continuing entitlement or contractual right.

Covered employees may be disqualified under specified circumstances and the commission may assess penalties against certain persons in specified circumstances. Any penalties are payable to the fund.

If a covered employee dies before receipt of short-term disability benefits, the payment shall be made to the covered employee's surviving spouse. If there is no surviving spouse, payments shall be made to the covered employee's child or children. If the covered employee has neither a surviving spouse nor children, payments shall be made to the covered employee's estate. If a covered employee is required to pay child support, the commission is required to withhold an amount in accordance with the child support order and pay that amount to the individual specified in the child support order.

To receive benefits an employee must: (1) file a claim for benefits; (2) have been employed for at least 520 hours during the qualifying year; (3) establish an application year; (4) document that he/she have provided the employer with written notice of the intention to take short-term disability leave; and (5) disclose if he/she have child support obligations. Written notice must be given to employers in specified circumstances.

Covered employees must make a reasonable effort to schedule treatment of serious health conditions for themselves or family members, subject to approval of their physician or the physician of the covered employee's family member, so as not to unduly disrupt the operations of the employer.

Short-term disability benefits are not payable for any week when compensation is payable under the State Workers' Compensation Title of the Labor and Employment Article or for any week when the compensation is payable under any federal workers' compensation program. A covered employee is not disqualified from receiving benefits during any week when there is a strike or lockout at the covered employee's place of employment.

Employers are required to keep specified records and the commission may inspect records. The bill provides for the transfer of liabilities to the fund if a business with covered employees ceases operations, is sold, or is transferred. Successor businesses are liable for outstanding premium payments and required to hold sufficient funds from the payment price to cover the outstanding liability.

Employers may require covered employees to use specified amounts of other leave under specified circumstances. This bill does not limit the right of an employee to other employee protection laws or the employers' leave policies. It also specifies what rights employees and employers have regarding the accrual of leave by an employee while that employee is receiving short-term disability benefits. Agreements to waive an employee's right to benefits provided in this bill are void.

The bill prohibits expulsion, discharge, or other discrimination against an employee for filing, or indicating intent to file, a claim under the provisions of this bill.

Current Law: There is no applicable current law relating to temporary disability insurance.

WCC's current mission is the adjudication of workers' compensation claims. WCC is not responsible for processing benefit payments to injured workers', and its current accounts receivable and accounts payable transactions are less than one-tenth of 1% of the volume that could be reasonably expected as a result of the responsibilities required by this bill.

Background: To date, California, Hawaii, New Jersey, New York, Rhode Island, and Puerto Rico have enacted somewhat similar legislation. The programs are typically not as expansive as this bill, with most only providing coverage to an employee for the birth or adoption of their own child or their own temporary disability, not that of a spouse or relative. No other state with a temporary disability program administers it through their workers' compensation agency. WCC has no experience collecting taxes or distributing benefits.

California

California has maintained a temporary disability program since the 1940s. The state requires employers to have employees participate in the state program, or provide comparable policies themselves. The program covers private sector employees, any state or local employees, and some federal employees. Employees must have worked at least 1,250 hours for their employer in the past 12 months. Employers with more than 50 employees within a 75-mile radius are required to cover employees.

Covered employees are eligible for between 55-60% of their wages for a period of up to 52 weeks. The maximum weekly benefit in 2001 was $490. The program only covers injury or illness not related to the covered employee's job. Pregnancy leave is also available. Covered employees are permitted up to four weeks of prebirth leave and up to six weeks of post-birth leave for a normal birth. The program is fully funded through employee payroll tax contributions. The 2003 rate is 0.9% and will generate $3.39 billion in revenue.

The California Employment Development Department collects the state's standard unemployment insurance payroll tax, income tax withholdings, and the payroll tax for the temporary disability and family temporary disability insurance programs. Administrative costs for the temporary and family temporary disability programs average 4-5%. These costs are paid for from the premium charged to covered employees.

The Family Temporary Disability Insurance (FTDI) program became law in September 2002. It provides up to six weeks of paid leave to employees to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child. An additional premium of 0.08% was added to the program contribution schedule for one year before employees were eligible for benefits to build a fund balance.

New Jersey

Under the New Jersey Temporary Disability Benefits Law, cash benefits are payable to a covered employee when the employee is unable to work due to sickness or injury not caused by their employment. A worker whose employment is covered by the New Jersey Unemployment Compensation Law is also protected by a mandatory disability insurance system. Coverage is extended to employees of the State of New Jersey, Rutgers, the State University, the College of Medicine and Dentistry, and the New Jersey Institute of Technology. County and municipal governments as well as other governmental entities may elect coverage for their employees.

Workers who become disabled within 14 days of their last day of work in covered New Jersey employment may be covered for disability insurance under the state plan or an approved private plan. A third program, known as "Disability During Unemployment" exists for those whose disabilities begin more than 14 days after the last day of work.

Weekly benefit rates are calculated using the covered employee's average weekly wage generally based on the earnings in the eight calendar weeks immediately before the week in which the disability begins. The total wages earned during all base weeks worked in the eight-week period are divided by the number of such base weeks to obtain the average weekly wage. Each claimant is paid two-thirds of his/her average weekly wage up to the maximum amount payable set for that calendar year. The maximum weekly benefit rate is $450 for disabilities beginning on or after January 1, 2003.

Rhode Island

The Rhode Island Temporary Disability Insurance (TDI) program provides workers who are unable to work due to illness or a nonwork connected injury with partial-income protection. The program is designed to close the gap between traditional unemployment and workers' compensation programs. Rhode Island initiated TDI in 1942. It is funded entirely by worker contributions set at 1.7% on the first $45,300 in taxable wages in 2003. Rhode Island pays for the administration of the program through the premiums collected. Administrative costs in 2001 and 2002 averaged 4-5% of premiums collected.

Generally, an employee is eligible for benefits equal to 60% of his/her salary for a period of up to 30 weeks. TDI includes a dependency allowance for up to five dependents. TDI claims in 2002 averaged $315 per week for 12.8 weeks for an average benefits claim of $4,032. The state paid approximately $151.0 million in claims in 2002 to over 37,344 covered employees.

Program Costs and Benefits

Several studies indicate positive social benefits to programs similar to this bill. A study entitled *Paid Family Leave in California: An Analysis of Costs and Benefits* (June 2002) examined several costs and social benefits associated with The Paid Family Leave Bill of 2002 (CA Senate Bill 1661). The authors note that greater leave taking may improve the health outcomes for children and elderly relatives of covered employees. The ability to take paid leave without fear of losing a job creates a greater attachment to a specific job. The study estimates $89 million in savings to employers due to a decrease in turnover and retention costs. The costs associated with programs such as FTDI would also be offset by lower costs in other government assistance programs, most notably TANF, Medicaid, and food stamps creating an estimated a $25 million savings in California.

A report entitled *Estimated Expenditures Under a Self-Funded Paid Family and Medical Leave Program in Maryland* (February 2003) issued by the Institute for Women's Policy Research has estimated benefit costs for a Maryland program for 2004 based on a variety of calculations related to the type of leave needed and the average duration of various leave types. 166,600 participating employees would result in benefit payments of $178.2 million. These estimates assume that the program provides benefits in 2004, with the statutorily set $336 as the maximum benefit level. The report also assumes an average weekly benefit of $270 and a median length of benefits of two weeks. The report does not estimate out-year benefit payment.

State Fiscal Effect:

Administration

The bill does not provide for the costs of administration of the program to be funded from premium receipts. Thus, a general fund expenditure increase of approximately $30 million in fiscal 2004, accounting for the January 1, 2004 effective date, is projected for the cost of approximately 500 new positions to perform the administrative, clerical, managerial, and information technology functions associated with the collection of premiums, distribution of benefits, direction of child support enforcement orders, withholding of income taxes when requested, maintenance of systems, advertising of the program, and other ongoing operating expenses.

Regulations would have to be adopted by the commission. Multiple consulting procurements would be required. The purchase or lease of new facilities, potentially in multiple locations throughout the State, to house the agency would be required. Ten million dollars for information technology systems is included in the fiscal 2004 estimate to purchase a system capable of handling premium collections from employers and benefit payments to approximately 199,264 employees in the first year of benefits.

Assumptions

The Department of Legislative Services (DLS) has based revenue and benefit estimates on the following assumptions:

- revenue collection will not begin until January 1, 2005 due to the substantial administrative burden of creating the program, hiring 500 new employees, procuring information technology systems capable of processing the premium collections and benefit payments, and training and education of employees and employers;
- benefit payments will not begin until January 1, 2006, to create a sufficient fund balance. Other states have indicated that actuarial studies have recommended certain fund balances be maintained at all times;
- a 10% reduction in the revenue calculation to adjust for employees who have not been with their employer for 520 hours and to adjust for employees who earn less than the taxable wage ceiling;
- 1% inflation of the following figures: (1) the State average weekly wage; (2) the employed labor force; and (3) the average length of benefits. This also causes the maximum weekly benefit, the taxable wage ceiling, and the benefit payments to increase by 1% annually;
- a State average weekly wage of $729 in calendar 2005 resulting in a taxable wage ceiling of $16,082;
- a maximum weekly benefit of $491 in calendar 2006 and a 30% reduction to calculate the average weekly benefit amount ($344) to account for more lower-income employee participation;
- 2.47 million employed workers in Maryland in 2005; and
- an 8% participation rate from the total employed workforce.

Revenues

The bill provides for the collection of premiums of 1.81% of the taxable wage ceiling of all covered employees in calendar 2004 and 2005. DLS does not believe that revenues in calendar 2004 are possible given the substantial administrative barriers involved in creating a new multimillion-dollar function within the commission.

DLS estimates that approximately $323.0 million in revenues are possible in fiscal 2005. Applying the formula (employed workers x taxable wage ceiling x premium rate x 90%) results in revenues of $646.1 million for calendar 2005.

The formula provided in this bill does not produce reliable estimates for out-year revenues based on fund balances. Under one set of assumptions in which benefits are paid for an average of nine and one-half weeks with an average weekly benefit of $344 in 2006, there would be no premium charged in calendar 2006. In calendar 2007, employees would be required to contribute 108% of the taxable wage ceiling for that year ($16,405) resulting in contributions of $17,646 per employee. Total fiscal 2007 revenue would exceed $19.9 billion.

Benefits

DLS estimates that benefit payments would commence on January 1, 2006. This delay allows for a one-year fund balance build-up to create actuarial soundness. The bill requires no actuarial study. Maximum weekly benefits in 2006 would be $491, with the average benefit paid $344. With 8% of the employed workforce receiving benefits for an average of nine and one-half weeks participating, benefits will approach $325.2 million in fiscal 2006.

Additional Information

Prior Introductions: None.

Cross File: HB 818 (Delegate Mandel, *et al.* – Economic Matters) is identified as a cross file although it is not identical.

Information Source(s): Uninsured Employers' Fund; Workers' Compensation Commission; Injured Workers' Insurance Fund; Subsequent Injury Fund; Maryland Supplemental Retirement Plans; Department of Labor, Licensing, and Regulation; New Jersey Department of Labor (Division of Temporary Disability Insurance); California Senate Office of Research; Women's Law Center of Maryland; Institute for Women's Policy Research (Dr. Vicky Lovell); Labor Project for Working Families (Arindrajit Dube and Ethan Kaplan); Economic Opportunity Institute

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