

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE

Senate Bill 113 (Senator Astle)
 Finance

Workers' Compensation - Accidental Injury - Unusual Activity

This bill alters the definition of “accidental personal injury” as it applies to workers’ compensation claims. The bill defines accidental personal injury as an accidental injury that arises out of and in the course of employment and is the result of an unusual activity (with the latter provision added by the bill).

The bill takes effect October 1, 2004 and applies to accidental injuries that occur on or after that date.

Fiscal Summary

State Effect: Total fund appropriations for workers’ compensation claims would decrease by \$4.0 million in FY 2007 based on the two-year lag between claims payments and State appropriations for workers’ compensation. Out-year estimates reflect 3% inflation but could shift significantly based on actual claims data. Notwithstanding this bill, there will be an increase in State costs in FY 2006 for claims paid in FY 2004 based on existing law.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF/SF/FF Exp.	0	0	(4,000,000)	(4,120,000)	(4,243,600)
Net Effect	\$0	\$0	\$4,000,000	\$4,120,000	\$4,243,600

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

Local Effect: To the extent that local jurisdictions are self-insured, this bill would prevent additional claims payments. To the extent that local jurisdictions have third-party workers’ compensation coverage, this bill would remove additional claims costs from third-party insurance carriers and relieve premium growth pressure.

Small Business Effect: To the extent that small businesses have third-party workers' compensation coverage, this bill would remove additional claims costs from third-party insurance carriers and relieve premium growth pressure.

Analysis

Current Law: Current statute defines a compensable accidental personal injury as an injury that arises out of or in the course of employment. There is no statutory provision related to the unusual activity standard.

Background: Case law in Maryland dating to 1927 required that the personal injury be the result of an unusual activity in order to be compensable. In 2003, the Court of Appeals held in *Harris v. Board of Education of Howard County*, that an injury does not need to result from unusual activity to be covered as an accidental injury. In *Harris*, a workers' compensation claim was filed by an employee who suffered a back injury while on duty. The claim was awarded by the Workers' Compensation Commission but appealed and rejected by the circuit court. The circuit court's decision was upheld by the Court of Special Appeals which stated that there was sufficient evidence to conclude that individual's injury was not the result of unusual activity. The Court of Appeals reversed the Court of Special Appeals. While prior case law supported the unusual activity standard, the Court of Appeals held that there is no statutory requirement that a compensable accidental injury arise out of unusual activity.

The American Insurance Association indicated that the *Harris* decision brought Maryland law in line with that of 46 other states. A review of workers' compensation statutes and regulations in Virginia, Pennsylvania, Delaware, and West Virginia did not find any specific reference to an unusual activity standard.

There have been significant and wide-ranging estimates of the factor by which workers' compensation claims payments will increase due to the *Harris* decision, on the general assumption that the removal of the unusual activity requirement will make more claims compensable. These estimates ranged as follows:

0.0%	AFL-CIO;
2.0%	National Council on Compensation Insurance (NCCI);
4-20%	Montgomery, Prince George's, Harford, and Baltimore counties;
5.0%	Injured Workers' Insurance Fund (IWIF) October 2003 estimate; and
7.2%	IWIF January 2004 estimate.

NCCI recently filed for a -6.1% private carrier workers' compensation rate change. One component of that rate change, which will be used as a baseline for all private workers'

compensation insurers in their proposed rate filings, was a 2% cost increase related to *Harris*. The Maryland Insurance Administration approved the NCCI rate proposal.

Injured Workers' Insurance Fund: IWIF indicates that the *Harris* decision has increased its claims paid and other costs by a total of \$10 million to date and that it will total approximately \$20 million annually. This estimate includes \$1.9 million to date in State-paid, *Harris*-related claims. The agency notes that it carries approximately 30% of the workers' compensation market in Maryland and based on this share the annual, statewide impact of removing the unusual activity standard would be approximately \$50-\$60 million.

While IWIF relies on actual claims data, the Department of Legislative Services (DLS) notes that the agency is the insurer of last resort for workers' compensation coverage in Maryland. The claims data from IWIF's customers, while indicative of the impact of the *Harris* decision on IWIF, should not necessarily be taken as applicable to the universe of workers' compensation claims in Maryland.

State Fiscal Effect: The State self-insures for workers' compensation claims. IWIF is the State's third-party administrator for workers' compensation insurance. IWIF estimates that State-paid, *Harris*-related claims to date total \$1.9 million and that the annualized cost for fiscal 2004 will be \$4.0 million.

IWIF provides the State with actual claims paid data, IWIF administration charges, and reinsurance costs for large claims annually for the prior year's actuals. For example, for the fiscal 2005 budget, the State utilized claims data from fiscal 2003. The *Harris* decision impacted claims beginning in fiscal 2004 and will begin to affect State workers' compensation claims costs in fiscal 2006. Enactment of this bill, which is effective July 1, 2004, would eliminate claims payments based on the *Harris* decision beginning in fiscal 2005. Because of the two-year lag between actual claims data and budgeted IWIF charges, this bill would produce a \$4.0 million reduction in IWIF charges in fiscal 2007. Out-year estimates reflect 3% inflation but would depend greatly on the number and complexity of actual claims filed.

DLS notes that actual claims data may vary from estimates provided here, and that the cost savings may be of greater magnitude. DLS also notes that the lack of an affirmative definition in the bill of what constitutes an unusual activity could increase costs in the Judiciary associated with litigating the definition. While the impact of this litigation cannot be reliably estimated, DLS notes that it will mitigate the cost savings associated with the reduction in claims paid discussed above.

State pension costs associated with accidental disability benefits could also be affected. Accidental disability retirements are awarded when the disability is the result of an

accidental personal injury that arose out of and in the course of employment, an identical standard to that used for workers' compensation. To the extent that accidental disability claims have increased due to the *Harris* case, State pension liabilities have also increased. Accidental disability retirements would decrease correspondingly under the provisions of this bill, resulting in a reduction in pension liabilities.

Additional Information

Prior Introductions: None.

Cross File: HB 13 (Delegate Arnick) – Economic Matters.

Information Source(s): Uninsured Employers' Fund, Workers' Compensation Commission, Injured Workers' Insurance Fund, Subsequent Injury Fund, National Council on Compensation Insurance, Maryland Insurance Administration, Department of Legislative Services

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mll/jr

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