

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 227
Finance

(Senator Kittleman)

**Workers' Compensation - Temporary Partial and Temporary Total Disability
Compensation - Incarcerated Persons**

This bill provides that an employer is not liable for the payment of temporary total disability compensation or temporary partial disability compensation under the State's workers' compensation laws in weeks when the covered employee to whom benefits otherwise would be due is incarcerated for a felony or misdemeanor conviction. The bill also prohibits a formerly incarcerated employee to whom compensation was not paid from claiming compensation for the weeks of incarceration.

Fiscal Summary

State Effect: Potential minimal decrease in workers' compensation costs (all funds) to the extent payments are reduced as a result of the bill.

Local Effect: Potential minimal decrease in workers' compensation costs for local governments to the extent payments are reduced as a result of the bill.

Small Business Effect: Potential minimal.

Analysis

Current Law: Temporary partial or temporary total disability compensation under the State's workers' compensation laws must be paid to covered employees even during periods of incarceration.

Background: In 1996, the Maryland Court of Appeals held that under the Workers' Compensation Act, an employer may not terminate or suspend temporary total disability benefits based solely on the incarceration of the worker. *Bowen v. Smith*, 342 Md. 449 (1996). The court grounded its opinion on the fact that the language of the Act did not justify the exclusion of the employee's right to compensation based on his incarceration. The Act does not provide for the suspension of disability benefits while a claimant is incarcerated, and as a result, the court held that it would not create such an exclusion. The court stated further that workers' compensation is a statutory responsibility and any change or addition to the law is a function of the legislature and not the courts.

State Fiscal Effect: The Injured Workers' Insurance Fund (IWIF), which administers the State's workers' compensation program, has advised that its average cost of temporary total and temporary partial disability compensation per claim since 1996 is approximately \$4,800. IWIF notes that while it does not statistically track the number of current claims involving incarcerated individuals, it informally estimates that it has three claims of this sort each year. Based on this estimate, the approximate savings would be \$14,000.

Additional Information

Prior Introductions: SB 589 of 2002, an identical bill, received an unfavorable report from the Senate Finance Committee. HB 637 of 2001 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

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

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