SB 801

Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 801 (Senator Kittleman)
Finance

Workers' Compensation - Temporary Total Disability - Exclusions

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This bill provides that an employer is not liable for temporary total disability (TTD) benefits for an employee who is: (1) either receiving retirement or disability benefits and is not currently employed; (2) is incarcerated and is not considered a covered employee of the prison or is not on work release; or (3) within three years prior to the claim period has not been employed unless the employee has been receiving TTD or vocational rehabilitation benefits.

The bill applies to the payment of any TTD compensation due on or after the bill's October 1, 2006 effective date.

Fiscal Summary

State Effect: Minimal decrease in workers' compensation costs (all funds) from reduced TTD benefit payments.

Local Effect: Minimal decrease in workers' compensation costs from reduced TTD benefit payments 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.

Employers are liable for the payment of either temporary partial disability compensation or temporary total disability compensation for a covered employee who has aggravated an injury during retirement or during voluntary withdrawal from the labor force. The statute of limitations for reopening or readjusting a temporary total or partial disability claim is five years.

Background: This bill reverses a Court of Special Appeals decision, *Edward Victor v. Gamble Manufacturing Company,* 318 Md. 624 CA No. 92, Sept. Term, 1989, which overturned a lower court decision that a claimant who has voluntarily retired is not entitled to additional temporary total disability payments after retirement.

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 Expenditures: According to information provided by the National Council on Compensation Insurance, Inc. (NCCI), for accident years 1994 through 2005, only 1% of claims were filed by workers age 65 and older. Assuming that all of these workers are eligible for retirement benefits, and given that TTD represents approximately 8% of total cost in Maryland, then the maximum systemwide savings from this bill related to retired workers is estimated to be less than one-tenth of 1% (0.1%). NCCI also estimates that any systemwide impact of the other provisions is also expected to be minimal as they would apply to relatively few cases. Correspondingly, any decrease in State expenditures for workers' compensation is also expected to be minimal.

Additional Information

Prior Introductions: SB 227 and SB 33 of 2005, similar bills, received unfavorable reports from the Finance Committee.

Cross File: HB 1018 (Delegate Wood) – Economic Matters.

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

Fiscal Note History: First Reader - February 17, 2006
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