

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 37
Economic Matters

(Delegates Stocksdale and Kach)

Workers' Compensation - Covered Employment - Exemption

This bill specifically excludes an undocumented immigrant from being an employee who is covered by workers' compensation benefits. An undocumented immigrant is defined as an individual who does not meet the requirements for lawful employment in the United States under current federal immigration law.

Fiscal Summary

State Effect: Assuming that the State does not employ undocumented immigrants, this bill will not directly affect governmental operations or finances.

Local Effect: Assuming that local governments do not employ undocumented immigrants, this bill will not directly affect local governmental operations or finances.

Small Business Effect: Potential meaningful to the extent that more civil actions are filed in the absence of workers' compensation coverage.

Analysis

Current Law: With certain exceptions, the liability of an employer under the workers' compensation law is exclusive, and the compensation provided to a covered employee under the law is in place of any right of action against any person. When a person other than an employer is liable for a compensable injury, the covered employee may either file a workers' compensation claim against the employer or bring an action for damages against the person liable for the injury.

The federal Immigration Reform and Control Act of 1986 (IRCA) requires employers to verify the identity and eligibility of newly hired workers and discharge workers discovered to have an undocumented status. Employers violating these provisions are subject to possible civil fines and criminal prosecution. The U.S. Supreme Court in *Hoffman Plastic Compounds v. NLRB* 535 U.S. 137 (2002) precluded back pay from being awarded to an illegal immigrant. The court indicated that providing back pay to an illegal immigrant runs counter to policies of IRCA and requiring mitigating damages (*i.e.*, the illegal immigrant returning to work) triggers additional IRCA violations. This court ruling has resulted in split decisions in various states on whether undocumented workers are entitled to lost income and how that lost income should be calculated.

Background: When Argentine employee Diego Lagos injured his hand while operating a saw, his claim for workers' compensation was appealed by his employer on the basis that Lagos failed to meet federal requirements for legal employment in the United States, and therefore was not eligible for benefits. The Workers' Compensation Commission, followed by the Circuit Court of Montgomery County, determined that State law broadly defines a covered employee to include undocumented residents. The Court of Appeals agreed (*Design Kitchen and Baths v. Lagos*, No. 82, Sept. 12, 2005), ruling that a worker does not have to be legally employed to be eligible for workers' compensation if the injury otherwise meets the test for compensation.

Traditionally, undocumented workers in Maryland who are injured on the job have been eligible for medical payments and lost income, but not certain vocational rehabilitation benefits. State law provides for benefits such as vocational evaluation, counseling, training, and job development for disabled employees; it does not specifically bar undocumented workers.

State laws governing benefits for undocumented workers vary. In over two dozen states, including Maryland, the law does not address whether a covered employee includes "aliens" or "unlawfully employed" workers. Where claims have been contested, courts have generally interpreted the law to include undocumented workers. Two exceptions to this pattern are Virginia and Wyoming. For example, the Supreme Court of Virginia held that an undocumented person could not enter into a contract for hire and, consequently, could not meet the state definition of an employee as a "person...in the service of another under any contract for hire." The Virginia legislature later amended the law to specify that a person is a covered employee "whether lawfully or unlawfully employed."

Small Business Effect: Overall, this bill is not expected to significantly reduce workers' compensation insurance costs. Presumably, most small businesses purchase workers' compensation coverage through an insurer and are not self-insured. However, excluding an undocumented immigrant worker from eligibility for workers' compensation coverage

allows that worker to pursue damages through a civil action against the employer. Any costs related to civil damages for small business cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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