

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 712
Finance

(Senator Kittleman)

Workers' Compensation - Covered Employees - Benefits

This bill provides that if an employer does not prove by a preponderance of the evidence that the employer complied with federal law to verify legal eligibility for employment of an "undocumented worker," the worker is entitled to all applicable workers' compensation benefits except vocational rehabilitation benefits.

The bill further provides that an undocumented employee who provides false documentation at hiring and sustains an accidental personal injury, compensable hernia, or occupational disease is eligible only for medical services and treatment under workers' compensation law.

Fiscal Summary

State Effect: No direct effect on operations or finances, provided that the State does not employ undocumented workers.

Local Effect: No direct effect on operations or finances, provided that local governments do not employ undocumented workers.

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 workers' compensation law is exclusive, and the compensation provided to a covered employee under the law replaces 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 with 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 decided that providing back pay to an illegal immigrant runs counter to IRCA policies and mitigating damages (*i.e.*, allowing the illegal immigrant returning to work) trigger additional IRCA violations. This court ruling has resulted in split decisions among 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 denied by his employer on the basis that Lagos failed to meet federal requirements for legal employment in the United States. 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.

Undocumented workers in Maryland who are injured on the job have been traditionally 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 laws do not address whether a covered employee includes an unlawfully employed worker. Courts have generally interpreted the laws to include undocumented workers, with the exception of Virginia and Wyoming. 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: This bill is not expected to significantly reduce costs to insurers and self-insured employers. It is assumed that most small businesses purchase workers' compensation coverage through an insurer; however, even if an undocumented immigrant worker is excluded from eligibility for workers' compensation coverage, that worker may still 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: A similar bill was introduced in the 2006 session as HB 37 and received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

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

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