

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1254
Economic Matters

(Delegates Manno and Schuler)

Workers' Compensation - Jurisdiction Pending Appeal

This bill specifies that the Workers' Compensation Commission (WCC) retains jurisdiction pending an appeal to consider a request for temporary total disability benefits for a disability arising from additional medical treatment ordered by WCC for a covered employee.

Fiscal Summary

State Effect: Potential expenditure increase (all funds) due to a rise in the number of temporary total disability benefits awarded by WCC to State employees who are injured on the job. The effect on the State is not expected to be significant because the State's accident leave policy already covers – at full salary – employees who suffer an injury on the job. No effect on revenues.

Injured Workers' Insurance Fund (IWIF) Effect: Potential increase in IWIF expenditures for temporary total disability payments due to increased supplemental awards ordered by WCC while appeals are considered by other courts.

Local Effect: Self-insured local governments may experience an increase in expenditures due to a rise in the number of temporary total disability benefits awarded by WCC to local government employees who are injured on the job. The effect on local governments is not expected to be significant because accident leave policies (similar to the State's policy) cover employees who suffer an injury on the job.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: WCC may pass a supplemental order requiring an employer to provide an employee with temporary total disability benefits if WCC finds that a covered employee is temporarily totally disabled resulting from additional medical treatment required by a WCC supplemental order.

If WCC finds that an employer or insurer has failed, without good cause, to pay an award required by a supplemental order, WCC must assess penalties against the employer or insurer as established in statute.

Current Law: An employer, covered employee, dependent of a covered employee, or any other interested person aggrieved by a decision of WCC may file an appeal in circuit court provided the appeal is filed within 30 days of WCC's order.

WCC retains jurisdiction pending appeal to consider requests for additional medical treatment and attention or requests for temporary total disability benefits. The request for temporary total disability must have been granted in the WCC's order and terminated by the insurer pending the appeal. If WCC finds that a covered employee's temporary total disability benefits were terminated pending adjudication or resolution of an appeal, assuming the employee was temporarily totally disabled at the time of termination, WCC may pass a supplemental order requiring the employer to provide temporary total disability benefits. If WCC's decision to award a claim is overturned, the insurer is entitled to an offset or credit for overpayment.

If an employer or its insurer fails to begin paying an award within 15 days of the date WCC issued the award, or established a payment due date (whichever is later), WCC must assess a fine of up to 20% of the amount of the payment. The maximum fine increases to 40% after 30 days.

A covered employee who is temporarily totally disabled due to an accidental personal injury or an occupational disease may file a claim for workers' compensation payments. The employer, or its insurer, must pay the employee compensation that equals two-thirds of his or her average weekly wage. However, the payment may not be more than the average weekly wage of the State (as determined by WCC) or less than \$50. The payments continue throughout the period that the employee is temporarily totally disabled. According to WCC, the 2009 average weekly wage is \$906.

Background: WCC projects that 24,000 claims will be filed in fiscal 2009, resulting in 17,075 commission orders. Approximately 2,010 of these orders will be appealed to circuit court. Under current law, a minority of these appeals are for consideration of issues that remain under the commission's jurisdiction during the appeals process. The

bill expands the number of cases where WCC retains jurisdiction and can award additional payments to a claimant under certain circumstances.

State/Local Fiscal Effect: To the extent that cases result from this bill involving State or local government employees, governments may experience an increase in temporary total disability benefit payments with similar per case costs to those of IWIF (as depicted in the illustrative example below). However, most government employees may be granted accident leave, which can be used under many circumstances for up to six months, when injured on the job. Although it is assumed that some disabilities last longer than six months or are not covered by accident leave, Legislative Services advises that the effect on the State and local governments is largely mitigated by the availability of accident leave.

WCC's administrative workload increases due to the bill. However, these expenses are recovered through WCC's annual maintenance assessment on insurance companies issuing workers' compensation policies, including IWIF and self-insured employers.

Injured Workers' Insurance Fund Effect: Expanding the number of cases that remain under the commission's jurisdiction may significantly increase the number of requests for temporary total disability benefits, resulting in additional benefit costs for insurers, including IWIF.

WCC advises that the number of cases where additional temporary total disability benefits are awarded is difficult to predict, but the circumstances for such awards are very specific – meaning a significant rise in the number of cases is unlikely.

IWIF advises that its average weekly temporary total disability payment is approximately \$513.40 and the average appeal takes 10 months. Thus, cases where additional benefits are awarded may involve significant payments from the insurer, in this case IWIF. *For illustrative purposes only*, if one-tenth of the 400 IWIF cases appealed each year results in additional temporary total disability benefits, and the benefit period lasts an average of 20 weeks (about one-half the time for an average appeal), the cost to IWIF is approximately \$410,720. The cost to IWIF ultimately depends on the actual number of requests for a supplemental award of temporary total disability benefits for additional medical treatment and attention that are made in appealed cases.

IWIF advises that some of the payments for temporary total disability payments made in appealed cases may be recovered by the employer or insurer through credits. However, in cases in which the court in the original appeal disallows the claim, there is no recovery as there are no future benefits against which the credit may apply.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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