

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1036 (Delegate Miller)
Economic Matters

Workers' Compensation - Temporary Total Disability - Incarcerated Employees

This bill establishes that an employer is not liable for the payment of temporary total disability compensation under the State's workers' compensation laws when the covered employee to whom benefits are otherwise due is incarcerated, unless the employee participates in a work release program. An employer, or insurer, must resume payments when the employee is released if the employee is still entitled to receive temporary total benefits.

The bill applies prospectively to any claims filed for temporary total disability on or after October 1, 2009.

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. No effect on revenues.

Injured Workers' Insurance Fund (IWIF): Potential minimal decrease in IWIF benefit payments as a result of the bill.

Local Effect: Potential minimal decrease in workers' compensation costs from reduced benefit payments as a result of the bill.

Small Business Effect: Potential minimal.

Analysis

Current Law: 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 the Workers' Compensation Commission) or less than \$50. The payments continue throughout the period that the employee is temporarily totally disabled. According to the Workers' Compensation Commission, the 2009 average weekly wage is \$906.

Temporary total disability compensation under the State's workers' compensation laws must be paid to covered employees even during periods of incarceration.

Background: IWIF advises that it does not track whether or not individuals are incarcerated and there is no requirement that IWIF be notified.

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.

Temporary total disability is paid as a wage replacement while the injured worker is unable to work due to injury. An injured worker may remain on temporary total disability until he or she reaches maximum medical improvement. Maximum medical improvement occurs when an injured employee reaches a state where his or her condition cannot be improved any further. At that point, no further healing or improvement is deemed possible. When a worker who is receiving workers' compensation benefits reaches maximum medical improvement, his or her condition is assessed and a degree of permanent or partial impairment is determined. This degree impacts the amount of permanent disability benefits the worker is able to receive.

State Fiscal Effect: The Uninsured Employers' Fund advises that its special fund expenditures decrease by about \$25,000 annually due to the reduction in workers' compensation payments. The National Council on Compensation Insurance also estimates that any systemwide impact of the bill's provisions is also expected to be

minimal as the bill applies to relatively few cases. Correspondingly, any decrease in State expenditures for workers' compensation is also expected to be minimal.

Small Business Effect: Employers, or their insurers, no longer pay temporary total disability claims for incarcerated individuals. It is difficult to determine the amount of savings, but it is expected to be minimal.

Additional Information

Prior Introductions: Similar legislation was introduced as SB 602 of 2007, SB 801/HB 1018 of 2006, SB 227 of 2005, SB 589 of 2002, and HB 637 of 2001. SB 602, SB 227 and SB 589 each received an unfavorable report from the Senate Finance Committee in their respective years. HB 1018 and HB 637 received an unfavorable reports in the House Economic Matters Committee. SB 801 of 2006 did not receive a vote.

Cross File: SB 520 (Senator Kittleman) - Finance.

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

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