HB 751

Department of Legislative Services

2010 Session

FISCAL AND POLICY NOTE

Revised

House Bill 751 (Delegate Miller, *et al.*)

Economic Matters Rules

Workers' Compensation - Temporary Total Disability Benefits - Credit

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This bill authorizes an employer, or its insurer, to receive a credit against any future permanent disability award for compensation paid to a covered employee who is temporarily totally disabled due to an accidental personal injury or occupational disease if medical treatment for the employee is delayed or suspended because of an injury, medical condition, or disease that is not related to the accidental personal injury or occupational disease.

The bill applies prospectively to any claims filed for temporary total disability on or after October 1, 2010.

Fiscal Summary

State Effect: State expenditures (all funds) may decrease minimally due to credits for compensation paid to employers and insurers in the State, including the State itself.

Injured Workers' Insurance Fund (IWIF): IWIF expenditures may decrease minimally due to credits paid to employers and insurers in the State.

Local Effect: Local expenditures may decrease minimally due to credits for compensation paid to employers and insurers in the State, including local governments.

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 2010 average weekly wage is $920.

Background: In 2004, the Maryland Court of Special Appeals held that, under the Workers' Compensation Act, an employer (or insurer) is required to continue temporary total disability benefits even if curative treatment cannot be performed due to an unrelated medical condition. *Moore v. Component Assembly Systems, Inc* 158 Md. App. 388, 857 A.2d 549 (2004). This bill addresses the court's ruling by specifying that employers (or insurers) may be entitled to a credit during a period when treatment cannot be performed.

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 improve. When a worker who is receiving workers' compensation benefits reaches maximum medical improvement, his or her condition is assessed and a degree of total or partial impairment is determined. The degree of impairment determines the amount of permanent disability benefits the worker receives.

State/IWIF/Local/Small Business Effect: *For illustrative purposes only*, IWIF estimates that it receives five cases each year for employers insured by IWIF that are affected by the bill. The average temporary total disability benefits, based on IWIF's caseload, are about $500 per claimant, per week. Assuming the treatment is delayed one year on average, each claimant receives about $26,000. Therefore, IWIF may be entitled to about $130,000 per year in credits against any future permanent disability award as a result of the bill. IWIF advises that the expenditure reduction is minimal considering that the agency issues about $30 million per year in temporary total disability payments.

The Uninsured Employers' Fund advises that its special fund expenditures may decrease by as much as $50,000 annually due to the reduction in workers' compensation payments. Other employers or insurers in the State, including the State itself, may experience similar savings.

The National Council on Compensation Insurance advises that an increase in legal expenses may occur due to litigation related to whether or not medical treatment is being delayed or suspended; whether or not a delay or suspension is caused by a medical condition, injury, or disease that is not related to the accidental personal injury or occupational disease; or when the period of delay or suspension of medical treatment starts or stops. The fiscal impact of potential litigation cannot be reliably estimated but is not expected to be significant.

Additional Information

Prior Introductions: SB 642/HB 1005 of 2009, similar legislation, passed the Senate and House, respectively. The House took no action on SB 642; HB 1005 received a hearing in the Senate Finance Committee, but no further action was taken on the bill.

Cross File: None.

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

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