SB 742

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 742 (Senator Kittleman)
Finance

Workers' Compensation - Average Weekly Wage - Contest of Determination

This bill authorizes an employer, an employer's insurer, or the Uninsured Employers' Fund (UEF) to contest the average weekly wage of a covered employee as determined by the Workers' Compensation Commission (WCC).

Fiscal Summary

State Effect: State expenditures (all funds except UEF) decrease minimally due to decreased workers' compensation benefits paid. General fund expenditures increase minimally to the extent that the bill results in more WCC hearings. UEF expenditures likely increase due to increased benefits paid, although the amount of any such increase cannot be reliably estimated at this time and is likely offset by an increase in UEF revenues due to benefits recovered from employers.

Injured Workers' Insurance Fund (IWIF) Effect: IWIF expenditures decrease minimally due to decreased workers' compensation benefits paid. IWIF revenues are not affected.

Local Effect: Local government expenditures decrease minimally due to decreased workers' compensation benefits paid. Local government revenues are not affected.

Small Business Effect: Small business expenditures decrease minimally due to decreased workers' compensation paid. Small business revenues are not affected.

Analysis

Bill Summary: An employer, an employer's insurer, or UEF may contest WCC's determination of a covered employee's average weekly wage by filing wage statements with the commission. Even so, benefits have to be paid to the covered employee based on WCC's original determination until the commission determines whether the average weekly wage should be modified. If WCC determines that a covered employee's actual average weekly wage is lower than what was originally determined, the commission is required to modify the wage and issue a modified order reflecting the benefits owed to the employee based on the modified wage. The employer, the employer's insurer, or UEF may not, however, receive credit for an overpayment of benefits if (1) the overpayment is attributable to the covered employee's average weekly wage as originally determined by WCC; and (2) the benefits were paid before the wage was contested under the bill.

Current Law/Background: In general, a covered employee's average weekly wage must be computed by determining the average of the weekly wages of the covered employee (1) when the employee is working full time; and (2) at the time of the employee's accidental personal injury or last injurious exposure to the hazards of an occupational disease. For purposes of this computation, wages include tips as well as the reasonable value of housing, lodging, meals, rent, and other similar advantages that the employee received from the employer.

If a covered employee establishes that, because of the employee's age and experience at the time of the accidental personal injury or last injurious exposure to the hazards of the occupational disease, the employee's wages could be expected to increase under normal circumstances, the expected increase may be taken into account when computing the employee's average weekly wage.

An employee's average weekly wage is used to determine the amount of workers' compensation benefits paid. This determination also depends on whether the injury is (1) temporary or permanent; and (2) partial or total. Compensation may not exceed a percentage (ranging from 16.7% to 100%, depending on the injury) of the State average weekly wage, which is currently $965.

UEF protects workers whose employers are without workers' compensation insurance. If an employer does not properly compensate a claimant, UEF directly pays the compensation benefits and medical expenses and then attempts to recover all benefits paid (plus certain assessments) from the uninsured employer. UEF is special funded by a statutorily mandated assessment on workers' compensation awards as well as by penalties collected from uninsured employers and revenues from the recovery of benefits paid out for uninsured claims.

If an employer is in default on a claim by a covered employee and does not notify WCC of its objection to the award, the covered employee may apply for payment from UEF. On receipt of such an application, UEF is authorized to either pay the award or apply for review. UEF's right to review includes raising issues, discovery, and a hearing before the commission. UEF advises that the review process typically takes several months.

UEF further advises that some average weekly wage claims are made without any supporting documentation (often because the claimant was paid in cash). According to UEF, these claims are often inflated and the noninsured employer may be reluctant to assist UEF in challenging the claim because UEF also seeks to enforce fines and awards against the employer. UEF advises that this lack of cooperation prolongs the time it needs to investigate average weekly wage claims.

State Fiscal Effect: To the extent that the bill allows the State to successfully contest the average weekly wage of a covered employee, State expenditures (all funds except UEF) decrease due to decreased workers' compensation benefits paid. Because IWIF (the State's third-party administrator and a major insurer in the State) advises that cases in which this bill applies are infrequent, the amount of any decrease is not expected to be significant.

Correspondingly, general fund expenditures increase to the extent that the bill results in more hearings contesting a covered employee's average weekly wage. Any such increase is not expected to be significant.

UEF is already authorized to challenge the original determination of a covered employee's average weekly wage and has the right to a hearing before WCC on that issue and other issues. Under the bill, however, UEF is required to pay benefits to the covered employee based on the original determination until the commission determines whether the average weekly wage should be modified. UEF advises that its expenditures are likely to increase by approximately $30,000 annually under the bill due to increased benefits paid by UEF during that time period. Legislative Services concurs that UEF's expenditures are likely to increase due to increased benefits paid under the bill, but advises that the amount of any such increase cannot be reliably estimated at this time. Legislative Services further advises that any increase in UEF expenditures under the bill is likely to be offset by an increase in UEF revenues due to benefits recovered by UEF from uninsured employers.

IWIF/Local/Small Business Expenditures: To the extent that the bill allows IWIF to successfully contest the average weekly wage of a covered employee, IWIF expenditures decrease due to decreased workers' compensation benefits paid. Because IWIF advises that cases in which this bill applies are infrequent, the amount of any decrease is not expected to be significant. Expenditures for local governments and small businesses decrease in a similar manner.

Some local governments have advised that their expenditures likely increase due to the bill's provisions prohibiting an employer from receiving credit for overpayment of benefits. Legislative Services – noting that these provisions apply only if WCC modifies the average weekly wage of a covered employee *as authorized by the bill* – advises that the provisions do not cause local government expenditures to increase but, rather, that the provisions merely limit the extent to which local government (as well as State, IWIF, and small business) expenditures decrease under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; Baltimore City; Department of Budget and Management; 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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