

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 311
Finance

(Senator Astle)

Workers' Compensation - Temporary Total Disability Benefits - Credit

This bill specifies that an employer (or its insurer) may be entitled to a credit for compensation paid to a covered employee who is temporarily totally disabled due to an accidental personal injury or an occupational disease if the employee's medical treatment for the injury or disease is delayed or suspended due solely to an unrelated injury, disease, or medical condition. The credit must be allowed only for compensation paid during the period in which employee's medical treatment was delayed or suspended.

The bill must be construed to apply only prospectively.

Fiscal Summary

State Effect: State expenditures (all funds) decrease beginning in FY 2014 due to credits allowed for compensation paid by employers and insurers (including the State). The amount of the decrease may vary, as discussed below.

Injured Workers' Insurance Fund (IWIF): IWIF expenditures decrease beginning in FY 2014 due to credits allowed for compensation paid by employers and insurers. The amount of the decrease may vary, as discussed below.

Local Effect: Local expenditures decrease beginning in FY 2014 due to credits allowed for compensation paid by employers and insurers (including local governments). The amount of the decrease may vary, as discussed below.

Small Business Effect: Minimal.

Analysis

Current Law/Background: Temporary total disability is paid as a wage replacement while the injured employee is unable to work due an accidental personal injury or an occupational disease. An injured employee may remain on temporary total disability until the employee reaches maximum medical improvement (meaning the employee's condition reaches a state where it can no longer improve); at that point, the employee's 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 employee receives.

In general, the employer (or its insurer) must pay, for the period that the covered employee is temporarily disabled, compensation that equals two-thirds of the employee's average weekly wage (but does not exceed the State's average weekly wage and is at least \$50). An employer (or its insurer) is required to continue payment of temporary total disability benefits even if curative medical treatment is delayed or suspended by an unrelated medical condition. *Moore v. Component Assembly Systems, Inc., et al.*, 158 Md. App. 388, 857 A.2d 549 (2004). The State's average weekly wage for calendar 2013 is \$990.

The National Council on Compensation Insurance (NCCI) advises that the percentage of workers' compensation claims that involve a comorbidity diagnosis increased from 2.4% to 6.6% from 2000 to 2009. NCCI further advises that medical costs for claims involving a comorbidity diagnosis are twice as high as medical costs for otherwise comparable claims. However, NCCI cannot estimate the impact of comorbidity on delays in medical treatment.

State/IWIF/Local/Small Business Effect: Expenditures decrease beginning in fiscal 2014 due to credits allowed for compensation paid by employers and insurers. The exact impact to expenditures depends on the number and nature of affected cases filed annually and cannot be reliably estimated at this time.

For illustrative purposes only, IWIF estimates (based on recent experience) that, on an annual basis, it receives 10 claims that are affected by the bill. IWIF further estimates that the average temporary total disability benefit amount is \$535 per claimant, per week. Assuming that treatment is delayed by one year on average, each claimant receives \$27,820 in compensation during the period in which treatment is delayed. Thus, IWIF may be expected to earn \$278,200 annually in credits against any future permanent disability award as a result of the bill. Other employers or insurers in the State – including the State and local governments – are similarly affected.

NCCI advises that litigation costs may increase due to disputes over the existence and/or cause of a delay in medical treatment or the timing and/or amount of credit for compensation paid. However, based on the relative infrequency of such claims, the Department of Legislative Services advises that any increase in litigation costs is expected to be minimal.

Additional Information

Prior Introductions: SB 642 of 2009 passed the Senate, but no further action was taken. Its cross file, HB 1005, passed the House and was heard by the Senate Finance Committee, but no further action was taken.

Cross File: HB 654 (Delegate Jameson) - Economic Matters.

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

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mc/ljm

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