

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 873
Economic Matters

(Delegate Cluster, *et al.*)

Workers' Compensation - Public Safety Employees

This bill extends to all deputy sheriffs in the State (1) an occupational disease presumption for heart disease or hypertension and (2) enhanced workers' compensation benefits for a compensable permanent partial disability for less than 250 weeks. Correctional officers in Allegany County are also eligible for enhanced benefits.

The bill must be construed to apply only prospectively and may not be applied or interpreted to have any effect on, or application to, any claims arising before the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: Any additional hearings before the Workers' Compensation Commission can likely be handled with existing budgeted resources.

Injured Workers' Insurance Fund (IWIF) Effect: IWIF expenditures increase to reflect increased workers' compensation benefits paid as a result of the bill's extension, to all deputy sheriffs, of an occupational disease presumption and enhanced permanent partial disability benefits. Revenues are not affected.

Local Effect: Local government expenditures for self-insured counties increase to reflect increased workers' compensation benefits paid as a result of the bill's extension, to all deputy sheriffs, of an occupational disease presumption and enhanced permanent partial disability benefits. Local government expenditures for Allegany County (which is self-insured) may also increase for enhanced benefits for its correctional officers. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: Workers' compensation law establishes a presumption of compensable occupational disease to certain public employees who are exposed to unusual hazards in the course of their employment. In general, the following employees may be presumed to have an occupational disease that was incurred in the line of duty if they have heart disease or hypertension that results in partial or total disability or death: (1) a police officer on a regular, full-time salary employed by an airport authority, a county, the Maryland-National Capital Park and Planning Commission, a municipality, or the State; (2) a correctional officer employed by Montgomery or Prince George's counties; or (3) a deputy sheriff on a regular, full-time salary employed by Baltimore City or Anne Arundel or Prince George's counties. A deputy sheriff or correctional officer specified above (1) is required to have met a suitable standard of physical examination before beginning employment and (2) is entitled to the presumption only to the extent that the individual suffers from heart disease or hypertension that is more severe than the individual's prior existing condition.

Although statute is silent on the issue, occupational disease presumptions have long been considered rebuttable presumptions. Two court decisions address the use of "is presumed" in reference to occupational diseases in current law, specifying that the term "without contrary qualification, should be read to be a presumption, although rebuttable, of fact." (See *Board of County Commissioners v. Colgan*, 274 Md. 193, 334 A.2d 89 (1975); and *Montgomery County Fire Board v. Fisher*, 53 Md. App. 435, 454 A.2d 394, aff'd, 298 Md. 245, 468 A.2d 625 (1983). However, the Court of Special Appeals has stated that, "after the last injurious exposure to a hazard and the conclusion of employment the nexus between an occupational disease and an occupation becomes increasingly remote." (See *Montgomery County, Maryland v. Pirrone*, 109 Md. App. 201, 674 A.2d 98 (1996).)

Specified public safety employees are entitled to receive enhanced workers' compensation benefits for permanent partial disabilities that are determined to be compensable for fewer than 75 weeks. Public safety employees who qualify for the enhancement are entitled to compensation equal to two-thirds of their average weekly wage, not to exceed one-third of the State average weekly wage. Deputy sheriffs eligible for the enhanced benefits are currently limited to those employed by Allegany, Montgomery, or Prince George's counties, or – if the deputy sheriff is performing specified law enforcement duties – Howard County.

For claims arising after January 1, 2011, the maximum award that other employees – who do not qualify for the enhancement – may receive for this type of injury is one-third of the employee’s average weekly wage (not to exceed 16.7% of the State average weekly wage). The State average weekly wage for calendar 2013 is \$990.

IWIF/Local Effect: Most counties and municipalities are, like the State, self-insured. To the extent that employers covered under the bill are not self-insured, benefits are paid by IWIF. Thus, both local governments and IWIF are affected in a similar manner.

Expenditures increase beginning in fiscal 2014 due to the bill’s extension of the occupational disease presumption for hypertension and heart disease to deputy sheriffs in all counties. IWIF advises that cases involving occupational disease presumptions are difficult to contest as the presumptions are not easily overcome. IWIF further advises that it has had 343 closed hypertension cases with accident dates in the last 10 years, resulting in approximately \$15.8 million in paid claims. Although the number of new claims that are likely to arise as a result of the bill cannot be reliably estimated at this time, the Department of Legislative Services (DLS) advises that – given the relatively expensive nature of such claims – expenditures may increase significantly.

Deputy sheriffs (as well as correctional officers in Allegany County) who are injured in the line of duty and are found to have a permanent partial disability that is compensable for less than 75 weeks are eligible for wage replacement benefits at a higher rate due to the bill. Although the number of claimants that are likely to be entitled to enhanced benefits under the bill is unclear, DLS advises that expenditures increase – perhaps significantly – due to increased benefits paid.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery and Prince George’s counties, Injured Workers’ Insurance Fund, Maryland Association of Counties, Maryland Municipal League, National Council on Compensation Insurance, Subsequent Injury Fund, Maryland Department of Transportation, Uninsured Employers’ Fund, Department of Legislative Services

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