

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 416
Economic Matters

(Delegate DeBoy, *et al.*)

**Workers' Compensation - Occupational Disease Presumption - Duty Belt Worn by
Law Enforcement**

This bill establishes that specified paid police officers and deputy sheriffs are presumed to be suffering from an occupational disease for a lower back impairment under workers' compensation law if (1) the police officer or deputy sheriff was required to wear a duty belt as a condition of employment and (2) other specified requirements are met.

Fiscal Summary

State Effect: Potential significant increase in State expenditures (all funds) due to the bill's expansion of the State's occupational disease presumptions. Potential increase in hearings before the Workers' Compensation Commission (WCC) due to the expansion. WCC may not be able to handle the additional workload with existing resources. Revenues are not affected.

Injured Workers' Insurance Fund (IWIF) Effect: Potential minimal increase in IWIF expenditures, to the extent employers affected by the bill are not self-insured, due to the bill's expansion of the State's occupational disease presumptions. IWIF revenues are not affected.

Local Effect: Potential significant increase in local government expenditures due to the bill's expansion of the State's occupational disease presumptions. Local government revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The presumption established by the bill applies to an individual who has been employed for at least five years as either (1) a police officer on a regular, full-time salary by an airport authority, a county, the Maryland-National Capital Park and Planning Commission, a municipality, or the State or (2) a deputy sheriff on a regular, full-time salary by Baltimore City or Allegany, Anne Arundel, Montgomery, or Prince George's counties. Such an individual is presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under workers' compensation law if (1) the individual is suffering from a lower back impairment resulting in partial or total disability and (2) as a condition of employment as a police officer or deputy sheriff, the individual was required to wear a duty belt (*i.e.*, a belt used to hold a gun, handcuffs, baton, and other items related to law enforcement).

The presumption must be extended to an individual following the termination of service as a police officer or deputy sheriff for 60 months, commencing with the last date the individual worked as a police officer or deputy sheriff.

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, a deputy sheriff or police officer specified by the bill may be presumed to have an occupational disease that was incurred in the line of duty if he or she has heart disease or hypertension that results in partial or total disability or death. In some cases, an employee is required to have met a suitable standard of physical examination before beginning employment.

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).)

Background: IWIF advises that 32% of its open claims (including both State and private claims) are related to back injuries. According to the American Academy of Orthopaedic Surgeons (AAOS), almost everyone will at some point experience lower back pain as a result of the normal wear and tear on the spine that is due to aging. Other causes include

over activity and disk injury. To prevent lower back problems, AAOS recommends exercise, proper lifting, weight maintenance, smoking avoidance, and proper posture.

State/Local Expenditures: Most counties and municipalities are, like the State, self-insured. Thus, both the State and local governments are affected in a similar manner. Expenditures increase beginning in fiscal 2014 due to the bill's expansion of the State's occupational disease presumptions. IWIF advises that cases involving occupational disease presumptions are difficult to contest as the presumptions are not easily overcome. IWIF further advises that, over the past 10 years, it has received 413 presumption cases resulting in approximately \$24 million in paid claims.

Local jurisdictions generally estimate their annual costs, under the bill, to be significant. (Montgomery County has estimated its annual costs \$6.0 million.) The Department of Legislative Services (DLS) advises that the number of new claims that will arise as a result of the bill cannot be reliably estimated at this time. However, given the prevalence of back injuries and the range of individuals affected, DLS anticipates that the extent to which expenditures increase under the bill may be significant.

WCC advises that the bill may result in an increase in the number of cases requiring adjudication. Although the number of new claims that will arise as a result of the bill cannot be reliably estimated at this time, DLS advises that any increase in WCC expenditures may result in an increased WCC assessment on insurers in the State.

Additional Information

Prior Introductions: HB 615 of 2012 received a hearing in the House Economic Matters Committee and was subsequently withdrawn.

Cross File: None.

Information Source(s): American Academy of Orthopaedic Surgeons; Baltimore, Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; Town of Bel Air; Department of Natural Resources; Department of General Services; Injured Workers' Insurance Fund; Maryland Association of Counties; Maryland Municipal League; Maryland-National Capital Park and Planning Commission; Department of State Police; Morgan State University; National Council on Compensation Insurance; Maryland Department of Transportation; Uninsured Employers' Fund; University System of Maryland; Workers' Compensation Commission, Department of Legislative Services

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