

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 257
Finance

(Senator Klausmeier)

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 the employee's medical treatment was delayed or suspended.

The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any claims for workers' compensation benefits filed before the bill's October 1, 2016 effective date.

Fiscal Summary

State Effect: State expenditures (all funds) decrease beginning in FY 2017 due to credits allowed for compensation paid by employers and insurers (including the State). The amount of the decrease may vary, as discussed below. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake): Chesapeake expenditures decrease beginning in FY 2017 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 2017 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 an injured employee is unable to work due to 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, an employer (or its insurer) must pay, for the period that a covered employee is temporarily totally disabled, compensation that equals two-thirds of the employee's average weekly wage (but the compensation may not exceed the State's average weekly wage and generally must be at least \$50). The State's average weekly wage for 2016 is \$1,027.

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 National Council on Compensation Insurance estimated that the percentage of workers' compensation claims that involve a comorbidity diagnosis (the simultaneous presence of two diseases or conditions in a patient) increased from 2.4% to 6.6% from 2000 to 2009.

State/Chesapeake/Local/Small Business Expenditures: Beginning in fiscal 2017, expenditures decrease 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, Chesapeake estimates (based on recent experience) that, on an annual basis, it receives five claims that are affected by the bill. Chesapeake further estimates that the average temporary total disability benefit amount is \$582 per claimant, per week. Assuming that treatment is delayed by six months on average, each claimant receives \$15,132 in compensation during the period in which treatment is delayed. Thus, Chesapeake may be expected to earn \$75,660 annually in credits against any future permanent disability awards as a result of the bill. Other employers or insurers in the State – including the State and local governments – are similarly affected.

Additional Information

Prior Introductions: SB 873 of 2015 was assigned to the Senate Finance Committee, but no further action was taken. SB 311 of 2013 received a hearing in the Senate Finance Committee, but no further action was taken. Its cross file, HB 654, received an unfavorable report from the House Economic Matters Committee. Similar legislation was also considered during the 2009 legislative session.

Cross File: None.

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

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