

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 863

(Delegate B. Barnes)(Chair, Joint Committee on
Pensions)

Appropriations

Budget and Taxation

State Retirement and Pension System - Workers' Compensation Offset

This bill requires the Board of Trustees of the State Retirement and Pension System (SRPS) to adjust its offset of an accidental or special disability retirement benefit if the retiree was originally awarded an ordinary disability retirement benefit that was later converted to an accidental or special disability benefit. The adjusted offset must reflect any offset awarded to the retiree's employer by the Workers' Compensation Commission (WCC), and it is retroactive. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: None. The bill conforms statute to existing practice.

Local Effect: None. The bill conforms statute to existing practice.

Small Business Effect: None.

Analysis

Current Law:

Pension Disability Payments

Prior to reaching normal retirement eligibility, a member of SRPS is eligible for one of two types of disability benefits:

- **ordinary disability**, if the member is mentally or physically incapacitated for the further performance of the normal duties of the member's position, the incapacity is likely to be permanent, and the member has five years of eligibility service; or
- **accidental disability**, if the member is totally and permanently incapacitated for duty as the natural and proximate result of an accident that occurred in the actual performance of duty at a definite time and place without willful negligence by the member, the member is mentally or physically incapacitated for the further performance of the normal duties of the member's position, and the incapacity is likely to be permanent. There is no minimum service requirement for accidental disability.

Instead of an accidental disability, members of the State Police Retirement System are eligible for a "special disability," in which the incapacity need only *arise out of* the actual performance of duty (*i.e.*, it need not occur at a specific time and place). For members of the Law Enforcement Officers Pension System, the disability benefit is still referred to as accidental, but the criteria for eligibility are identical to those for the State Police Retirement System in that the incapacity need only *arise out of* the actual performance of duty. These accidental and special disability benefits are often referred to as "line-of-duty" benefits.

In general, an ordinary disability benefit is the greater of:

- a normal service retirement allowance; or
- for individuals who are not yet eligible for normal retirement, the lesser of (1) 25% of the member's average final compensation (AFC) or (2) a normal service retirement allowance computed using years of creditable service and AFC projected to when the individual would have qualified for a normal retirement.

An accidental disability benefit is equal to the lesser of:

- the member's AFC; or
- the sum of two-thirds of a member's AFC and an annuity payment based on the member's accumulated contributions at the time of retirement.

For the accidental benefit, the benefit portion (but not the annuity) is exempt from federal and State income taxes. In almost all cases, the benefit is the latter of the two options.

Workers' Compensation

All employers in Maryland are required to provide workers' compensation coverage for their employees. The cost to the employer varies by industry, and there are approximately 600 industrial classifications.

An injury is covered under workers' compensation if the harm suffered by the covered employee was by an accidental personal injury arising out of and in the course of covered employment. Benefits are paid to injured employees by the employer (if the employer is self-insured) or the employer's workers' compensation insurer. For compensable injuries, workers' compensation benefits include wage replacement, medical treatment, death and funeral costs, and vocational rehabilitation expenses. Wage replacement benefits are based on the employee's average weekly wage and on the type of injury, as prescribed in the statute.

An employee has the responsibility of filing a claim with WCC; however, if an accidental personal injury causes death or a disability for more than three days, the employer must report the accident to WCC within three days of learning about the injury. Additionally, when learning that a covered employee has been disabled due to an occupational disease, the employer must promptly report the disability to the commission.

Benefit Offsets

Several provisions in current law are designed to prevent an SRPS member from getting two payments from the State for the same disability. Thus, SRPS members receiving an *accidental* or *special* disability payment are subject to an offset if they are getting a workers' compensation payment for the same injury or illness, subject to specified limits. Offsets do not include any calculation of cost-of-living benefits that are paid on the original benefit amount. Conversely, workers' compensation payments are subject to an offset if a recipient is also receiving an *ordinary* disability payment from SRPS.

Background: The State Retirement Agency (SRA) advises that the offset arrangements in current law create a disjointed and sometimes inconsistent process. Specifically, when SRPS retroactively awards a line-of-duty benefit after first awarding an ordinary disability that has been offset by WCC, SRPS must then reduce the line-of-duty benefit by the amount of the workers' compensation award, resulting in the retiree having the same offset taken twice. The SRPS board asked the Joint Committee on Pensions (JCP) to sponsor legislation that, in these instances, requires it to adjust (reduce) its offset of accidental or special disability benefits to reflect the offset already taken by WCC. JCP agreed to sponsor the legislation.

SRA reports that, in the last three years, it has converted a total of 37 ordinary disability awards to accidental or special disability awards, including 24 for State retirees and 13 for PGUs. Of those, 27 had a corresponding workers' compensation award. SRA further advises that, since March 2018, it has not been taking a double offset on relevant disability cases but instead has been taking offsets as of the date of conversion, as allowed by the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 486 (Senator Griffith)(Chair, Joint Committee on Pensions) - Budget and Taxation.

Information Source(s): State Retirement Agency; Chesapeake Employers Insurance; Subsequent Injury Fund; Uninsured Employers' Fund; Department of Legislative Services

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