

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1119 (Delegate Kerr, *et al.*)
Economic Matters

**Frederick County - Workers' Compensation - Occupational Disease and
Permanent Partial Disability - Deputy Sheriffs and Correctional Officers**

This bill extends to Frederick County deputy sheriffs and correctional officers an occupational disease presumption for heart disease or hypertension that is more severe than the individual's prior condition and results in partial or total disability or death. The bill also alters the definition of "public safety employee" to include both types of employee, which makes these officers eligible for enhanced workers' compensation benefits.

Fiscal Summary

State Effect: The bill does not directly affect State operations or Finances.

Chesapeake Employer's Insurance Company (Chesapeake) Effect: The bill does not affect Chesapeake operations or finances.

Local Effect: Frederick County expenditures increase, likely significantly, beginning in FY 2020. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: Provisions related to designation as a "public safety employee" 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, 2019 effective date.

Current Law:

Occupational Disease Presumptions

Workers’ compensation law establishes a presumption of compensable occupational disease for certain public safety employees who are exposed to unusual hazards in the course of their employment. It is assumed that these injuries or diseases are due to the employees’ work and, therefore, require no additional evidence in the filing of a claim for workers’ compensation. As shown below, generally presumptions are based on particular occupations and their associated health risks.

<u>Type of Personnel/Occupation</u>	<u>Type of Disease</u>
Volunteer and career firefighters, firefighting instructors, rescue squad members, and advanced life support unit members; fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State	Heart disease, hypertension, or lung disease that results in partial or total disability or death Leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin’s lymphoma, brain, testicular, or breast cancer under specified conditions
Deputy sheriffs, police officers, and correctional officers of specified counties	Heart disease or hypertension that results in partial or total disability or death
Department of Natural Resources paid law enforcement employees and park police officers of the Maryland-National Capital Park and Planning Commission	Lyme disease under specified conditions

A covered employee who receives a presumption is entitled to workers’ compensation benefits in addition to any benefits that the individual is entitled to receive under the retirement system. The weekly total of workers’ compensation and retirement benefits may not exceed the weekly salary paid to the individual.

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).)

Enhanced Benefits for Public Safety Employees

Normally, an employee who is awarded compensation for a permanent partial disability for a period less than 75 weeks is eligible to receive weekly benefits of one-third of his or her average weekly wage, but that amount may not exceed 16.7% of the State average weekly wage. However, a public safety employee is eligible for enhanced workers’ compensation benefits if awarded compensation for less than 75 weeks. In such a case, the employer or its insurer must pay the public safety employee at a compensation rate set for an award period of greater than 75 weeks but less than 250 weeks. Thus, a public safety employee is eligible to receive approximately double the weekly benefits – two-thirds of his or her average weekly wage, but that amount may not exceed one-third of the State average weekly wage. The State average weekly wage for 2019 is \$1,116.

Local Expenditures: Frederick County advises that its private workers’ compensation insurance policy is a high deductible policy wherein the first \$350,000 of each claim is the direct responsibility of the county. Therefore, even though Frederick County is insured, most or all of the additional costs resulting from the bill are paid directly by the county.

Occupational Disease Presumption

Frederick County advises that it currently employs 183 deputy sheriffs (plus 10 vacancies) and 125 correctional officers (plus 12 vacancies). The number of employees who may benefit from the compensable occupational disease presumption established by the bill cannot be reliably estimated at this time, although 308 total county employees may currently qualify. Considering the prevalence of heart disease and hypertension in society at large, it is likely that Frederick County will be responsible for numerous claims each year as a result of the bill, and payment of such claims may continue for several years. As such, expenditures likely increase minimally in fiscal 2020 but grow exponentially in future years as existing claims are paid and new claims are made.

Data on claims for Montgomery and Prince George’s counties is instructive as correctional officers for those counties are also entitled to an occupational disease presumption for heart disease or hypertension under the same provisions as those established by the bill for Frederick County deputy sheriffs and correctional officers. Frederick County is likely to have a similar experience since a similar number of employees with similar responsibilities are affected by the bill. Frederick County requested information from both counties and received the following information related to hypertension claims.

- Montgomery County currently employs 348 correctional officers and has experienced 43 hypertension presumption claims since the presumption was enacted in that county in 2005. The county has paid an average of \$16,072 for each claim spread over multiple years. The county has experienced an average of 2.9 hypertension claims each year.
- Prince George's County currently employs 410 correctional officers and has experienced 73 hypertension presumption claims since the presumption was enacted in that county in 2008. The county has paid an average of \$16,080 for each claim spread over multiple years; however, two hypertension claims exceed \$100,000 each. The county has experienced an average of 6.1 hypertension claims each year.

Enhanced Benefits

Frederick County deputy sheriffs and correctional officers are also entitled to enhanced workers' compensation benefits under the bill's provisions, due to their designation as public safety employees. This benefit is for any claim, not just those related to heart disease and hypertension. While the number of claims made subject to enhancement in any given year cannot be reliably estimated, any expenditure increase due to this designation is expected to be significant, beginning in fiscal 2020.

Permanent partial disability awards for less than 75 weeks (awards that receive the enhanced benefits) are among the most common types of compensation awards. A public safety employee who receives such an award in 2019 would be entitled to a maximum weekly benefit of \$372 (for a maximum of 74 weeks, for a total of \$27,528); whereas any other employee would be entitled to a maximum weekly benefit of \$186 (for a maximum of 74 weeks, for a total of \$13,764) under the same circumstances. Thus, for each deputy sheriff or correctional officer who sustains this type of injury, Frederick County may pay up to \$13,764 more in wage replacement benefits under this provision of the bill. *For illustrative purposes only*, if the county receives 15 such claims per year, county expenditures increase by up to \$206,460 annually due to this provision.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Frederick County; Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Department of Legislative Services

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