

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 812
Finance

(Senator Klausmeier)(Chr Wrkrs' Comp Bnft & Ins Com)

Workers' Compensation - Occupational Disease Presumptions - COVID-19

This emergency bill establishes an occupational disease presumption for employees with specified public safety and first responder occupations (such as paid and volunteer firefighters, police officers, and paramedics) and certain health care workers that are suffering from the effects of severe acute respiratory syndrome coronavirus 2 (which is the virus that causes COVID-19) and meet other specified requirements. The bill must be construed to apply retroactively and must be applied to or interpreted to affect any claim filed on or after January 1, 2020.

Fiscal Summary

State Effect: State expenditures increase, potentially significantly, beginning in FY 2021 due to the bill's expansion of occupational disease presumptions. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures increase beginning in FY 2021, potentially significantly, to the extent that the bill results in additional workers' compensation benefits payments on behalf of State and local governments and small businesses insured by Chesapeake. Revenues increase to the extent that premiums are raised due to claims experienced under the expanded occupational disease presumptions.

Local Effect: Local government expenditures increase, potentially significantly, beginning in FY 2021 due to the bill's expansion of occupational disease presumptions. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Presumption for COVID-19 – Established

The bill's occupational disease presumption applies to specified firefighters, advanced life support unit members, paramedics, rescue squad members, police officers, sheriffs, deputy sheriffs, and correctional officers. Such an employee is presumed to be suffering from an occupational disease that was suffered in the *line of duty* and is compensable if the individual:

- is suffering from the effects of severe acute respiratory syndrome coronavirus 2; and
- has been diagnosed with COVID-19 or tests positive for severe acute respiratory syndrome coronavirus 2 or the virus's antibodies.

The bill's occupational disease presumption also applies to a health care worker whose primary place of employment is a facility licensed by the Maryland Health Care Commission or an individual employed in a health care, home care, or long-term care setting where patients are diagnosed with or treated for COVID-19. Such an employee is presumed to be suffering from an occupational disease that was suffered in the *course of employment* and is compensable if the individual:

- is suffering from the effects of severe acute respiratory syndrome coronavirus 2; and
- has been diagnosed with COVID-19 or tests positive for severe acute respiratory syndrome coronavirus 2 or the virus's antibodies.

An individual eligible for benefits under either the line-of-duty or course-of-employment presumption must provide a copy of the positive test or the written documentation confirming the diagnosis to the employer or insurer. The date of injury for an individual is the first date on which the employee was unable to work due to *either* the diagnosis of COVID-19 *or* the symptoms that were later diagnosed as COVID-19, whichever occurred first. The presumption established by the bill may be rebutted only if the employer or insurer shows that the employment was not a direct cause of the disease.

Existing statutory requirements related to occupational disease line-of-duty presumptions apply for public safety occupations – specifically those related to interactions between benefits and dependents and benefits and the retirement system.

Reporting and Filing of Claims

Similar to current law, the timeframe during which a covered employee (or someone on behalf of the covered employee) must notify the employer of the COVID-19 occupational disease established by the bill is one year from the later of (1) the date on which the covered employee tested positive for severe acute respiratory syndrome coronavirus 2 or severe acute respiratory syndrome coronavirus 2 antibodies or (2) the date on which the covered employee receives a diagnosis of COVID-19. Likewise, the timeframe during which a covered employee may file a claim with the Workers' Compensation Commission (WCC) for the COVID-19 occupational disease presumptions established by the bill is two years from the later of (1) the date on which the covered employee tested positive for severe acute respiratory syndrome coronavirus 2 or severe acute respiratory syndrome coronavirus 2 antibodies or (2) the date on which the covered employee receives a diagnosis of COVID-19. Generally, unless these requirements are waived by the employer or its insurer or excused by WCC, failure to meet either deadline bars the workers' compensation claim for the occupational disease.

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, bladder, kidney or renal cell, 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

<u>Type of Personnel/Occupation</u>	<u>Type of Disease</u>
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).)

Timeframes for Reporting and Filing of Claims

Written notice of a disability or death caused by an occupational disease must be given to the employer by the covered employee affected (or someone on behalf of the covered employee) as follows: (1) for disability, within one year after the covered employee knows or has reason to believe that the covered employee has the occupational disease; or (2) for death, within one year after the death. Unless notice is waived by the employer or insurer or excused by WCC, failure to give this notice bars the workers' compensation claim.

Except for pulmonary dust disease, a claim for an occupational disease that causes a disability or death must be filed with WCC (by the covered employee or the dependents of the employee) within two years after the date (1) of disablement or death or (2) when the covered employee or dependents first had actual knowledge that the disablement was caused by the employment. Generally, unless waived by the employer or its insurer or excused by WCC, failure to meet the deadline bars the workers' compensation claim for the occupational disease.

State/Local/Small Business Effect: Any increase in expenditures for the State, local governments, and small businesses depends on (1) how many employees contract COVID-19 and consequently qualify for the occupational disease presumption and (2) whether any of those employees would have received workers' compensation for COVID-19 absent the bill. The Department of Legislative Services advises that a covered employee may still receive workers' compensation for COVID-19 under current law; the presumptions established under the bill ensure no additional evidence is required to qualify for benefits.

State (all funds), local government, and small business expenditures increase beginning in fiscal 2021 due to the bill's significant expansion of the State's occupational disease presumptions. Many State employees, such as officers employed by the Department of State Police, correctional officers employed by the Department of Public Safety and Correctional Services, and health care personnel employed by the State-run hospitals, may be able to qualify for the occupational disease presumption established by the bill. Similarly, local governments employ a large number of public safety officers through local law enforcement agencies and local fire departments. While small businesses do not generally employ public safety personnel, many small businesses employ health care workers that may be covered by the occupational disease presumption.

Despite the vaccination priority for public safety personnel and health care workers, given the retroactive application of the presumption and potentially severe physical and mental health effects of COVID-19 and rate of hospitalization for the illness, the impact on the State, local governments, and small businesses could be significant, depending on the number of claims experienced. *For illustrative purposes*, Chesapeake advises that, as of February 10, 2021, it has received 768 first reports of injury but only 92 total claims related to COVID-19, totaling 63 State government claims, 16 local government claims, and 13 private industry claims, of which:

- 43 have been accepted by WCC;
- 16 have been contested and are awaiting judicial review;
- 5 have been withdrawn by the claimant;
- 25 are still being investigated; and
- 3 have been denied by WCC.

Under the retroactive application of the bill's occupational disease, some of the remaining 676 first reports of injury, and potentially many more unreported cases of COVID-19, could become workers' compensation claims that oblige benefit payments made by the State, local governments, small businesses, and/or their insurers.

Chesapeake Expenditures: As the administrator of workers' compensation claims for the State and the workers' compensation insurer for many local governments, Chesapeake anticipates more claims to be paid out due to the additional occupational disease presumptions beginning as early as fiscal 2021. As noted above, Chesapeake had already received 92 claims related to COVID-19 as of February 10, 2021, and is likely to receive many more claims as the pandemic continues.

Additional Comments: In March 2020, the Governor declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration has been renewed several times, most recently on February 19, 2021. For more information on the COVID-19 pandemic, please see the **Appendix – COVID-19**.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Maryland Department of Health; Department of Juvenile Services; Department of State Police; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Maryland Association of County Health Officers; Baltimore City; Kent and Worcester counties; Department of Legislative Services

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Appendix – COVID-19

In December 2019, a novel strain of coronavirus known as severe acute respiratory syndrome coronavirus 2 emerged in Wuhan, China. Coronavirus disease (COVID-19) is an infectious disease caused by this virus. As the number of cases spread globally by March 2020, the World Health Organization declared COVID-19 a pandemic.

Testing, Cases, and Deaths in Maryland

Maryland's first three confirmed cases of COVID-19 were recorded on March 6, 2020, with the first two deaths occurring March 16, 2020. As of January 27, 2021, Maryland reported a total of 346,559 confirmed cases, 31,468 individuals ever hospitalized, and 6,821 confirmed deaths. The jurisdictions with the highest number of cases have been Prince George's, Montgomery, and Baltimore counties and Baltimore City. Statewide, 8.4% of cases (28,954) and 45.9% of COVID-19 deaths (3,130) occurred in congregate living settings (*i.e.*, nursing homes, assisted living, and group homes). Updated data on COVID-19 in Maryland is available on the Maryland Department of Health (MDH) dashboard: <https://coronavirus.maryland.gov>.

Vaccines

In December 2020, the U.S. Food and Drug Administration approved both Pfizer-BioNTech and Moderna's COVID-19 vaccines for emergency use. Due to limited quantities, distribution began with priority groups as determined by states. Maryland began distribution in January 2021 with Phase 1A, which includes health care workers, residents and staff of nursing homes, first responders, public safety, corrections staff, and front-line Judiciary staff. Phase 1B began January 18, 2021, and includes residents of assisted living facilities and other congregate settings, adults age 75 and older, staff of K-12 schools and child care facilities, high-risk incarcerated individuals, and those involved in continuity of government. As of January 27, 2021, the State is in Phase 1C, which includes adults aged 65 and older, additional public safety and public health workers, and essential workers in food/agriculture, manufacturing, public transit, and the postal service. Phase 2 will include individuals aged 16 to 64 at increased risk of severe illness, incarcerated adults, and remaining essential workers. Phase 3 will include the general public. As of January 27, 2021, 852,625 doses of the vaccine have been distributed, and 419,579 doses have been administered (363,282 first doses and 56,297 second doses). Updated data is available on the MDH dashboard: coronavirus.maryland.gov/#Vaccine.

Declaration of a State of Emergency and Initial Executive Orders

On March 5, 2020, Governor Lawrence J. Hogan, Jr. declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration, which has been renewed several times (most recently January 21, 2021), initiated a series of executive actions, including moving the Maryland Emergency Management Agency to its highest activation level, activating the National Guard, and closing all public schools. The Governor then ordered the closure of in-house dining at bars and restaurants and banned mass gatherings of more than 50 people. This action was followed by a more extensive stay-at-home order on March 30, 2020, requiring closure of all nonessential businesses. This order remained in effect until May 15, 2020.

Emergency Legislation

Chapters 13 and 14 of 2020 (the COVID-19 Public Health Emergency Protection Act of 2020) authorized the Governor, for the duration of the emergency, to take actions relating to health insurance, Medicaid, retailer profits, employer actions, and personnel at State health care facilities as a result of the state of emergency and catastrophic health emergency. The Acts also authorize the Secretary of Labor to determine certain individuals eligible for unemployment insurance (UI) benefits due to COVID-19. The Acts terminate April 30, 2021.

Subsequent Executive Orders and Advisories

Since March 2020, the Governor has issued numerous executive orders relating to COVID-19, including (1) closing Maryland ports and harbors to passenger vessels; (2) expanding child care access; (3) expanding the scope of practice for health care practitioners, activating the Maryland Responds Medical Reserve Corps, controlling and restricting elective medical procedures, closing adult day care centers, and providing additional health care regulatory flexibility; (4) augmenting emergency medical services; (5) prohibiting price gouging; (6) fast tracking lab testing processes; (7) authorizing expanded telehealth services; (8) delegating authority to local health officials to control and close unsafe facilities; (9) extending certain licenses, permits, and registrations; (10) authorizing remote notarizations; (11) prohibiting evictions of tenants suffering substantial loss of income due to COVID-19, additionally prohibiting certain repossessions, restricting initiation of residential mortgage foreclosures, and prohibiting commercial evictions; (12) regulating certain businesses and facilities and generally requiring the use of face coverings; (13) establishing alternate health care sites and authorizing regulation of patient care space in health care facilities; and (14) implementing alternative correctional detention and supervision.

Federal Legislation Regarding COVID-19

Five federal emergency bills have been enacted to address the COVID-19 pandemic:

- the **Coronavirus Preparedness and Response Supplemental Appropriations Act**, which provided \$8.3 billion in emergency funds for federal agencies (including \$950 million through the U.S. Centers for Disease Control and Prevention for state and local response);
- the **Families First Coronavirus Response Act**, which addressed emergency family and medical leave and paid sick leave, specified insurance coverage of COVID-19 testing, and provided additional funding for nutrition assistance programs and unemployment benefits;
- the **Coronavirus Aid, Relief, and Economic Security (CARES) Act**, which included a Coronavirus Relief Fund for state and local governments; an Education Stabilization Fund for states, school districts, and institutions of higher education; a Disaster Relief Fund for state and local governments; additional funding for public health agencies to prevent, prepare for, and respond to COVID-19; funding for transit systems; an expansion and extension of eligibility for UI benefits, and additional temporary unemployment compensation of \$600 per week; \$349 billion for the establishment of the Paycheck Protection Program (PPP); a \$500 billion lending fund for businesses, cities, and states; and Economic Impact Payments to American households of up to \$1,200 per adult and \$500 per child;
- the **Paycheck Protection Program and Health Care Enhancement Act**, which provided an additional \$310 billion to PPP, \$75 billion for health care providers, \$60 billion for small business disaster loans, and \$25 billion for increased testing capacity; and
- the **Consolidated Appropriations Act, 2021, and Other Extensions Act**, which included \$908 billion in relief, including another \$284 billion for PPP, \$82 billion for schools, \$45 billion for transportation, \$25 billion in emergency assistance to renters, \$20 billion for vaccine distribution, \$13 billion for a major expansion in Supplemental Nutrition Assistance benefits, \$13 billion for agriculture and rural programs, \$10 billion for child care assistance, extended federal unemployment benefits of up to \$300 per week, extended the federal moratorium on evictions through January 31, 2021, and provided a second stimulus payment of up to \$600 per person.

Federal Funding for Maryland to Address COVID-19

The CARES Act and the Families First Coronavirus Response Act provided Maryland with a significant amount of federal aid. More than \$6 billion in assistance has been made available to the State and local governments, including an enhanced federal matching rate for Medicaid. More than \$900 million was directly provided to local governments. The largest and most flexible portion of CARES Act funding is the Coronavirus Relief Fund, which totals \$2.3 billion, \$691 million of which was allocated directly to Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties.

CARES Act funding also included \$800 million for the Disaster Recovery Fund; \$696 million for transit grants; \$575 million in enhanced Medicaid matching funds (through December 2020); \$239 million in CDC grants; \$108 million for airports; \$74 million for community development block grants; \$50 million for homelessness assistance; \$46 million for grants for local education agencies and higher education institutions; \$46 million for child care and development block grants; \$36 million for public housing and rental assistance grants; \$24 million for community health centers; \$20 million for senior nutrition; \$19 million for energy assistance; \$18 million for justice assistance grants; \$17 million for administration of the UI program; \$14 million for community service block grants; \$13 million for emergency food assistance; \$8 million for Head Start; \$8 million for the Women, Infants, and Children program; and \$7 million for election security.

The Consolidated Appropriations Act is estimated to provide Maryland with \$1.2 billion for education (including \$869 million for K-12 education, \$306 million for higher education, and \$57.7 million for the Governor's Fund); \$1.1 billion for transportation (including \$830.3 million for transit in the Washington, DC area, \$149.3 million for highways, \$76.2 million for transit in Baltimore, \$22.5 million for airports, and \$9.1 million for rural area grants); more than \$475 million for health (including \$335.6 million for testing, \$75.3 million for vaccines, \$32.6 million for mental health assistance, and \$31.9 million for substance use assistance); \$402.4 million for rental assistance; and \$140.6 million for human services (including \$130.4 million for child care).