

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 433

(Senator Klausmeier)

Finance

Labor and Employment - Workers' Compensation Claims - Fees for Legal Services

This bill authorizes the Workers' Compensation Commission (WCC) to order a fee of up to \$2,000 be paid for legal services rendered on behalf of a covered employee if no compensation, other than a medical benefit, is payable to the covered employee. WCC may order the fee to be paid by (1) the covered employee; (2) the employer or its insurer; (3) a self-insured employer; or (4) the Uninsured Employers' Fund (UEF). The bill 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 from events occurring before the effective date.

Fiscal Summary

State Effect: The bill generally codifies a practice authorized by WCC regulations, as discussed below. Therefore, the bill is not anticipated to materially affect State operations or finances.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: The bill generally codifies a practice authorized by WCC regulations, as discussed below. Therefore, the bill is not anticipated to materially affect Chesapeake operations or finances, as discussed below.

Local Effect: The bill generally codifies a practice authorized by WCC regulations, as discussed below. Therefore, the bill is not anticipated to materially affect local government operations or finances, as discussed below.

Small Business Effect: Potential minimal.

Analysis

Current Law:

Workers' Compensation – Generally

If an employee covered under workers' compensation insurance has suffered an accidental personal injury, compensable hernia, or occupational disease, the employee is entitled to compensation benefits paid by the employer, its insurer, the Subsequent Injury Fund, or UEF, as appropriate. Workers' compensation benefits include wage replacement, medical treatment, and vocational rehabilitation expenses. Wage replacement benefits are calculated based on the covered employee's average weekly wage; medical benefits are generally fully or partially covered, depending on how the treatment is related to the personal injury, hernia, or occupational disease.

If a covered accident or occupational disease results in the death of the covered employee, then the employee's dependents are entitled to workers' compensation death and funeral benefits. Similar to wage replacement benefits, death benefits are calculated using the covered employee's average weekly wage. The duration of benefits and total benefits allowed depend on if the dependents were partially or wholly dependent on the covered employee, among other factors.

Workers' Compensation Commission

WCC administers workers' compensation claims by processing and adjudicating all claims, maintaining a record of all contested cases, certifying a complete record to the judicial forum in case of an appeal, and referring those individuals requiring vocational rehabilitation to appropriate providers. WCC must also approve of any fee or other charge paid in relation to a claim for legal services, medical services, supplies or treatment, or funeral expenses. Any such fee paid from an award of compensation may only be paid in the manner set and approved by WCC.

Workers' Compensation – Regulatory Fees

Recent changes to the [Code of Maryland Regulations 14.09.04.03](#) authorized WCC to approve an attorney's fee in exceptional circumstances, including those being addressed by the bill. Specifically, in exceptional circumstances, WCC may approve an attorney's fee in a case (1) in which it is determined that the claimant is not entitled to any compensation or benefits or (2) involving issues such as medical care and treatment, or vocational rehabilitation, in which the claimant does not receive any monetary award.

State/Chesapeake/Local/Small Business Effect: The \$2,000 fee most likely applies in situations where a claimant had previously been awarded compensation and medical benefits and, at some point in the future, needed additional medical treatment for the injury after the compensation benefits have been exhausted. Since attorneys representing claimants are generally paid based on compensation benefits awarded (and not medical benefits), they had been required to charge claimants directly for their services. However, as noted above, WCC has recently adopted regulations that allow it to approve an attorney's fee to be paid under the circumstances in the bill, with the major differences being that (1) WCC has flexibility to set the fee under the existing regulations, but the bill specifies that the fee may not exceed \$2,000 and (2) the bill delineates who may be ordered to pay the fee, including UEF, while the regulations are silent on this point. Even so, the bill is not anticipated to materially affect expenditures associated with workers' compensation.

For illustrative purposes, Chesapeake advises that, over the last four years, it has experienced an average of six claims per year that fall under the circumstances being addressed by the bill. Accordingly, the fiscal impact of the regulations (and the bill by proxy) are assumed to be negligible.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 501 (Delegate Valderrama) - Economic Matters.

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

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