

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 377

(Senator Kramer)

Finance

Economic Matters

Workers' Compensation - Benefits - Offset and Study

This bill limits the application of existing provisions that do not require the payment of workers' compensation benefits to specified public-sector employees when the employee is receiving other *similar* public benefits; that provision only applies when the other public benefits being paid are based in whole or in part on the same body part. The bill also requires the Maryland Association of Counties and the Professional Fire Fighters of Maryland (PFFOM) to jointly research and submit a report on the bill's changes. By December 1, 2024, the report on findings must be submitted to interested parties and specified committees of the General Assembly.

Fiscal Summary

State Effect: According to the Chesapeake Employers' Insurance Company (Chesapeake), the Maryland Supreme Court decision being abrogated by the bill does not affect any benefit offset used by State government. Therefore, the bill is not anticipated to directly affect State operations or finances.

Chesapeake Effect: Chesapeake expenditures increase to the extent that additional benefits are paid to affected employees on behalf of affected local governments. Chesapeake revenues increase correspondingly as Chesapeake increases its premiums to account for the additional liability.

Local Effect: Local expenditures likely increase, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The required report must include data and analysis of the effects of the bill on the offset of benefits following the implementation of the bill compared to a comparable period of time before the Supreme Court of Maryland Decision in [Spevak v. Montgomery County, 480 Md. 562 \(2022\)](#).

It is the intent of the General Assembly that the bill abrogate the holding by the Supreme Court of Maryland in *Spevak v. Montgomery County*. The bill must be applied in a manner consistent with the Supreme Court of Maryland decision in [Reger v. Washington County Board of Education, 455 Md. 68 \(2017\)](#).

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 (SIF), or the Uninsured Employers' Fund, 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.

Offset Against Other Benefits

If a covered employee of a governmental unit or a quasi-public corporation receives another benefit granted by a statute, charter, ordinance, resolution, regulation, or policy (regardless of whether it is part of the pension system), then payment of that benefit satisfies any liability of the employer and SIF for the payment of *similar* workers' compensation benefits the employee may be owed. If payment of that benefit, however, is less than the workers' compensation benefits the claimant would receive, then the employer, SIF, or both must provide an additional benefit that equals the difference.

If federal law provides benefits for an individual who is a covered employee of the Military Department of the State that are equal to or less than any workers' compensation benefits an individual may be receiving, then the individual is not entitled to the workers' compensation benefits. However, if the benefits provided are less than the workers' compensation benefits an individual may be receiving, then the State must provide an additional benefit that equals the difference.

Recent Case Law Affecting the Offset of Benefits

Prior to the 2022 decision in [Spevak v. Montgomery County](#), the application of the benefit offset described above was governed by the Maryland Supreme Court decision in [Reger v. Washington County Board of Education](#). The offset primarily occurs for a type of disability retirement benefit offered by local governments, and both decisions affect local governments with that specific type of disability retirement benefit. In the *Reger* case, the court held that:

In summary, the legislative intent behind the overall offset provision now contained in Labor and Employment § 9-610 is to prevent employees of a Maryland governmental unit or quasi-public corporation who are covered by both a pension plan and workers' compensation from receiving a double recovery for the same injury. Similarly, we conclude that the legislative intent behind the specific language in the statute that "payment of the benefit by the employer satisfies, to the extent of the payment, the liability of the employer ... for payment of similar benefits under this title," Labor and Employment § 9-610 (emphasis added), was that the offset apply only to "comparable" benefits, which are "benefits accruing by reason of the same injury."

The court's decision in the *Spevak* case, however, overturned the decision in the *Reger* case by applying a broader interpretation of "similar" benefits. The court interpreted "similar" to apply to *all* service-related injuries, regardless of whether the benefits were awarded for the same or different injuries. Specifically, the court held that:

For the foregoing reasons, we hold that Mr. Spevak's service-connected total disability retirement benefits arising from his back injury are similar to the permanent partial disability retirement benefits arising from his occupational hearing loss. In enacting the offset provision contained in Labor and Employment § 9-610, the General Assembly sought to preclude employees from receiving duplicative recovery at the taxpayers' and State's expense. Service-connected total disability retirement benefits compensate the recipient for all injuries related to the recipient's service. Therefore, as a matter of law, Mr. Spevak's service-connected total disability retirement

benefits are similar to his permanent partial disability benefits, and the benefits related to his occupational hearing loss are offset under Labor and Employment § 9-610.

Local Expenditures: In essence, the Maryland Supreme Court decision in [Spevak v. Montgomery County](#) ensures that affected local governments can claim the benefit offset in most cases where an employee is receiving both workers' compensation and disability retirement benefits, which allows local governments to limit their costs. By abrogating the *Spevak* decision and requiring the courts to interpret the offset provision as it was in [Reger v. Washington County Board of Education](#), the bill limits the application of the offset, thereby likely increasing workers' compensation costs for affected local governments.

A precise estimate of the impact depends on numerous unknown factors and cannot be reliably estimated at this time. Indeed, the purpose of the report required of MACO and PFFOM is to determine exactly how the bill affects workers' compensation costs for local governments. MACO advises that the report can be completed without experiencing any additional costs.

Chesapeake Fiscal Effect: As the workers' compensation insurer for many local governments, Chesapeake expenditures increase to the extent that additional benefits are paid. Chesapeake revenues increase correspondingly as Chesapeake increases its premiums to account for the additional liability.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 590 (Delegate Pruski) - Economic Matters.

Information Source(s): Department of Budget and Management; Maryland Department of Transportation; Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Workers' Compensation Commission; Maryland Association of Counties; Department of Legislative Services

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km/ljm

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Analysis by: Richard L. Duncan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510