

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 538
Finance

(Senator Kramer)

Workers' Compensation - Occupational Disease Presumptions - Hypertension

This bill expands an existing occupational disease presumption for hypertension for volunteer and career firefighters, firefighting instructors, rescue squad members, and advanced life support unit members and fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State. Specifically, to qualify for the occupational disease presumption, the hypertension no longer has to result in partial or total disability or death. Additionally, an individual may not be required to demonstrate disablement to be eligible for the hypertension presumption.

Fiscal Summary

State Effect: State expenditures (all funds) increase, likely minimally, beginning in FY 2024 due to the bill's expansion of the State's occupational disease presumption for hypertension. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures increase beginning in FY 2024, potentially significantly, to the extent that the bill results in additional workers' compensation benefits payments on behalf of the State and local governments. Revenues increase to the extent that premiums are raised due to claims experience under the expanded occupational disease presumptions.

Local Effect: Local government expenditures increase, potentially significantly, beginning in FY 2024, due to the bill's expansion of occupational disease presumptions. Revenues are not affected.

Small Business Effect: None.

Analysis

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
Police officers; deputy sheriffs, correctional officers, and detention 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, park police officers of the Maryland-National Capital Park and Planning Commission, forest rangers, park rangers, and wildlife rangers	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 in which the individual participated at the time of the claim. However, the weekly total of workers' compensation and retirement benefits may not exceed the weekly salary that was paid to the individual; any necessary adjustment is made against the workers' compensation benefits.

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 (now the Appellate Court of Maryland) 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)).

State/Local Expenditures: Any increase in expenditures depends on how many affected employees qualify for the occupational disease presumption in any given year and whether any of those employees would have received workers’ compensation for hypertension absent the bill. The Department of Legislative Services (DLS) advises that a covered employee may still receive workers’ compensation for hypertension under current law; the presumptions established under the bill ensure no additional evidence is required to qualify for benefits.

However, given that the U.S. Centers for Disease Control and Prevention estimates that [nearly half \(47%\) of all Americans have hypertension](#) and that the bill removes the requirement that the hypertension has to result in partial or total disability or death to qualify for the presumption, many more employees are likely qualify for the occupational disease presumption and subsequently receive compensation benefits as a result of the bill.

State Expenditures

State expenditures (all funds) may increase beginning in fiscal 2024, due to the bill’s expansion of the State’s occupational disease presumption for hypertension. Some State employees, particularly those within the Office of the Fire Marshal and the Baltimore/Washington International Thurgood Marshall Airport Fire and Rescue Department, may be able to qualify for the presumption. DLS advises that the number of State employees likely eligible for the hypertension presumption under the bill is relatively small; thus, any increase in State expenditures due to additional claims benefits is likely to be minimal.

Local Expenditures

Local governments are disproportionately affected by the bill because counties and municipalities, most of which are self-insured, employ the majority of the public safety personnel who may be affected by the bill. Accordingly, local expenditures likely increase

beginning in fiscal 2024. DLS advises that, although the amount of any such increase in expenditures cannot be reliably estimated at this time, it could be significant given the prevalence of hypertension in the general population and ease with which an employee can qualify for the presumption.

Chesapeake Fiscal Effect: As the administrator of workers' compensation claims for the State and the workers' compensation insurer for many local governments, Chesapeake is likely to experience more hypertension claims beginning in fiscal 2024. To the extent more claims occur, Chesapeake expenditures and revenues increase correspondingly as Chesapeake pays the additional claims and 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 919 (Delegate Rogers, *et al.*) - Economic Matters.

Information Source(s): Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Workers' Compensation Commission; National Council on Compensation Insurance; Maryland Association of Counties; Maryland Municipal League; Frederick County; City of Havre de Grace; U.S. Centers for Disease Control and Prevention; Department of Legislative Services

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