Chapter 410

(Senate Bill 377)

AN ACT concerning

Workers' Compensation – Benefits – Offset and ~~Hearing Loss~~ Study

FOR the purpose of altering the circumstances under which the payment of a benefit by a governmental unit or quasi–public corporation to a covered employee offsets the liability for benefits under the workers' compensation law; ~~altering the method used to determine the deduction required to be made to allow for the average amount of hearing loss from nonoccupational causes in the population for purposes of calculating workers' compensation benefits for occupational deafness; requiring tinnitus to be considered part of a covered employee's hearing loss; requiring that benefits awarded related to hearing loss be awarded without adjustment due to offset against other benefits; requiring the Joint Committee on Workers' Compensation Benefit and Insurance Oversight to conduct a certain evaluation~~ *stating that it is the intent of the General Assembly that the Maryland Association of Counties and the Professional Fire Fighters of Maryland jointly research* and report certain information; and generally relating to workers' compensation benefits.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 9–610 ~~and 9–650~~
Annotated Code of Maryland
(2016 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Labor and Employment

9–610.

(a) (1) Except for benefits subject to an offset under § 29–118 of the State Personnel and Pensions Article, if a statute, charter, ordinance, resolution, regulation, or policy, regardless of whether part of a pension system, provides a benefit to a covered employee of a governmental unit or a quasi–public corporation that is subject to this title under § 9–201(2) of this title or, in case of death, to the dependents of the covered employee, payment of the benefit by the employer satisfies, to the extent of the payment, the liability of the employer and the Subsequent Injury Fund for payment of ~~[~~similar~~]~~ benefits under this title **ONLY IF THE PAYMENT OF THE BENEFIT BY THE EMPLOYER AND THE PAYMENT FOR BENEFITS UNDER THIS TITLE ARE BASED ~~ON THE SAME ACCIDENTAL INJURY OR OCCUPATIONAL DISEASE~~, IN WHOLE OR IN PART, ON THE SAME BODY PART**.

(2) If a benefit paid under paragraph (1) of this subsection is less than the benefits provided under this title, the employer, the Subsequent Injury Fund, or both shall provide an additional benefit that equals the difference between the benefit paid under paragraph (1) of this subsection and the benefits provided under this title.

(3) The computation of an additional benefit payable under paragraph (2) of this section shall be done at the time of the initial award and may not include any cost of living adjustment after the initial award.

(b) (1) If federal law provides benefits for an individual who is a covered employee of the Military Department of the State under § 9–215 of this title that are equal to or greater than the benefits provided by this title, the covered employee is not entitled to benefits under this title.

(2) If federal law provides benefits for a covered employee of the Military Department of the State that are less than the benefits provided by this title, the State and its insurer shall provide an additional benefit that equals the difference between the benefit provided by federal law and the similar benefit provided by this title.

(c) (1) The Commission may:

(i) determine whether any benefit provided by the employer is equal to or greater than any benefit provided for in this title; and

(ii) make an award against the employer or the Subsequent Injury Fund or both to provide an additional benefit that equals the difference between the benefit provided by the employer and the benefits required by this title.

(2) A claim that comes under this section is subject to the continuing powers and jurisdiction of the Commission.

~~9–650.~~

~~(a) (1) Hearing loss shall be measured by audiometric instrumentation that meets the following criteria:~~

~~(i) ANSI 3.6–1996;~~

~~(ii) ANSI S3.43–1992; and~~

~~(iii) ANSI 3.39–1987 or any ANSI standard that supersedes the previous calibration or measurement criteria.~~

~~(2) Measurements shall be conducted in a sound room that meets the ANSI 3.1–1991 criteria for maximum permissible ambient noise for audiometric test rooms.~~

~~(3) Behavioral psychoacoustic measurements shall be obtained with instrumentation that utilizes insert earphones, as referenced in ANSI 3.6–1996.~~

~~(4) Electrodiagnostic measurements such as auditory evoked potentials, acoustic emittance measurements, or distortion product otoacoustic emissions may be obtained to determine the nature and extent of workplace hearing loss.~~

~~(5) Audiologic results shall be used in conjunction with other information to evaluate a claimant's compensable hearing loss.~~

~~(b) (1) The percentage of hearing loss for purposes of compensation for occupational deafness shall be determined by calculating the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000, 2,000, and 3,000 hertz in accordance with paragraph (2) of this subsection.~~

~~(2) The average of the thresholds in hearing shall be calculated by:~~

~~(i) adding together the lowest measured losses in each of the 4 frequencies; and~~

~~(ii) dividing the total by 4.~~

~~(3) To allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss determined under paragraphs (1) and (2) of this subsection THE LESSER OF:~~

~~(I) one–half of a decibel for each year of the covered employee's age over 50 [at the time of the last exposure to industrial noise]; OR~~

~~(II) ONE–HALF OF A DECIBEL FOR EACH YEAR SUBSEQUENT TO THE DATE OF THE COVERED EMPLOYEE'S LAST INJURIOUS EXPOSURE TO INDUSTRIAL NOISE.~~

~~(c) (1) If the average hearing loss in the 4 frequencies determined under subsection (b) of this section is 25 decibels or less, the covered employee does not have a compensable hearing loss.~~

~~(2) If the average hearing loss in the 4 frequencies determined under subsection (b) of this section is 91.7 decibels or more, the covered employee has a 100% compensable hearing loss.~~

~~(3) For every decibel that the average hearing loss exceeds 25 decibels, the covered employee shall be allowed 1.5% of the compensable hearing loss, up to a maximum of 100% compensable hearing loss at 91.7 decibels.~~

~~(d) The binaural percentage of hearing loss shall be determined by:~~

~~(1) multiplying the percentage of hearing loss in the better ear by 5;~~

~~(2) adding that product to the percentage of hearing loss in the poorer ear; and~~

~~(3) dividing that sum by 6.~~

~~(e) (1) In determining the percentage of hearing loss under this section, consideration may not be given to whether the use of an amplification device improves the ability of a covered employee to understand speech or enhance behavioral hearing thresholds.~~

~~(2) (i) In determining a workers' compensation claim for noise–related hearing loss, audiologic data shall use both bone conduction and air conduction results.~~

~~(ii) If a conductive loss is present, the bone conduction thresholds for each ear, rather than the air conduction levels, shall be used to calculate a claimant's average hearing loss.~~

~~(F) (1) TINNITUS SHALL BE CONSIDERED PART OF A COVERED EMPLOYEE'S HEARING LOSS UNDER THIS SECTION.~~

~~(2) WHEN DETERMINING THE PERCENTAGE OF HEARING LOSS ATTRIBUTABLE TO TINNITUS, THE COMMISSION SHALL:~~

~~(I) CONSIDER THE EVALUATION REQUIRED UNDER § 9–721(A) AND (B) OF THIS TITLE; AND~~

~~(II) ADD THE PERCENTAGE OF HEARING LOSS ATTRIBUTABLE TO TINNITUS TO THE HEARING LOSS PERCENTAGE DETERMINED UNDER SUBSECTION (D) OF THIS SECTION TO DETERMINE THE TOTAL PERCENTAGE OF THE COVERED EMPLOYEE'S HEARING LOSS.~~

~~(G) BENEFITS PROVIDED UNDER THIS SECTION SHALL BE AWARDED WITHOUT AN ADJUSTMENT BEING MADE UNDER § 9–610 OF THIS SUBTITLE.~~

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that this Act abrogate the holding by the Supreme Court of Maryland in Spevak v. Montgomery County, 480 Md. 562 (2022).

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be applied in a manner that is consistent with the holding by the Supreme Court of Maryland in Reger v. Washington County Board of Education, 455 Md. 68 (2017).

SECTION 4. AND BE IT FURTHER ENACTED, That~~:~~

~~(a) The Joint Committee on Workers' Compensation Benefit and Insurance Oversight shall conduct an evaluation and report, with input from appropriate parties,~~ *it is the intent of the General Assembly that:*

(1) the Maryland Association of Counties and the Professional Fire Fighters of Maryland jointly research and submit a report on the effects of the amendments to § 9–610 of the Labor and Employment Article implemented by this Act~~.~~*;*

~~(b)~~ *(2)* ~~The~~ *the* report ~~shall~~ include data and analysis of the effects of this Act on the offset of benefits following the implementation of this Act compared to a comparable period of time before the Supreme Court of Maryland decision in Spevak v. Montgomery County, 480 Md. 562 (2022)~~.~~*; and*

~~(c)~~ *(3)* ~~On~~ *on* or before December 1, 2024, the ~~Committee~~ *Maryland Association of Counties and the Professional Fire Fighters of Maryland* ~~shall~~ report ~~its~~ *their* findings to interested parties and, in accordance with § 2–1257 of the State Government Article, the Senate Finance Committee and the House Economic Matters Committee.

SECTION ~~2.~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.

Approved by the Governor, May 3, 2023.