

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 845
Finance

(Senator Klausmeier)

**Workers' Compensation - Temporary Partial Disability - Concurrent
Employment**

This bill requires an employer, or its insurer, to pay a higher workers' compensation benefit rate (specifically, the rate paid when a covered employee experiences a temporary *total* disability), when a covered employee experiences a temporary *partial* disability and meets other specified requirements. 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 claim filed before the effective date of the bill.

Fiscal Summary

State Effect: State expenditures (all funds) increase, likely minimally, to pay the higher compensation rate established by the bill for affected employees beginning as early as FY 2025, as discussed below. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures increase to pay the higher compensation rate established by the bill for affected employees beginning as early as FY 2025, as discussed below. Chesapeake revenues increase correspondingly to cover any additional liabilities.

Local Effect: Local government expenditures increase to pay the higher compensation rate applied by the bill for affected employees as early as FY 2025, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill's requirements apply for a covered employee who:

- is temporarily partially disabled as a result of an accidental personal injury or occupational disease;
- was concurrently employed by more than one employer at the time that the accidental personal injury or occupational disease occurred;
- is unable to perform at the employment where the accidental personal injury or occupational disease occurred; and
- is able to perform at a concurrent employment.

For any such employee, the employer at the employment where the accidental personal injury or occupational disease occurred, or its insurer, must pay a covered employee compensation that equals two-thirds of the average weekly wage (AWW) of the covered employee if:

- the covered employee is not at maximum medical improvement;
- a physician certifies in writing that the covered employee is temporarily partially disabled from the employment where the accidental personal injury or occupational disease occurred and capable of continuing work in the concurrent employment; and
- the covered employee worked in the concurrent employment for at least eight weeks before the injury or occupational diseases occurred.

This compensation may not exceed the State-designated maximum rate or be less than \$50. An employer may not be required to pay the compensation for a period of more than six months.

Current Law: For compensable injuries, workers' compensation benefits include wage replacement, medical treatment, death and funeral costs, and vocational rehabilitation expenses. Wage replacement benefits are based on the employee's AWW and on the type of injury, as prescribed in statute; however, in all cases, an employee's weekly benefits may not exceed a certain percentage of the State AWW. For example, an employee who is awarded compensation for a permanent partial disability for a period less than 75 weeks (one of the most common types of awards) is eligible to receive weekly benefits of one-third of the employee's AWW, but that amount may not exceed 16.7% of the State AWW. The [State AWW for 2024](#) is \$1,456.

If an employee is awarded compensation for a temporary *partial* disability, the employer or insurer must pay compensation that equals 50% of the difference between (1) the AWW of the covered employee and (2) the wage-earning capacity of the covered employee in the

same or other employment while temporarily partially disabled. The weekly compensation may not exceed 50% of the State AWW.

If an employee is awarded compensation for a temporary *total* disability, the employer or insurer must pay compensation that equals two-thirds of the AWW of the covered employee but that does not exceed the AWW of the State and is not less than \$50. If the AWW of the covered employee is less than \$50 at the time of the accidental personal injury or last injurious exposure to the hazards of the occupational disease, the employer or its insurer must pay the covered employee compensation that equals the AWW of the covered employee.

State/Chesapeake/Local /Small Business Fiscal Effect: Under current law, if a covered employee experiences a compensable accidental injury or occupational disease that makes it impossible for that employee to perform the duties of the job while in recovery, that employee would generally receive benefits for a temporary *total* disability. However, if that same employee has a second job, and can continue working that second job during recovery from the injury, the employee would be ineligible to receive benefit for a temporary *total* disability and, instead, would likely receive benefits for a temporary *partial* disability. This interpretation of workers' compensation law was established by *Buckler v. Willett Constr. Co.*, 345 Md. 350 (1997).

In essence, the bill circumvents the decision in *Buckler v. Willett Constr. Co.* by requiring the payment of claims equal to a temporary *total* disability award for any employee that receives a temporary *partial* disability award but would have likely received a temporary *total* disability award if that employee only had one job instead of multiple jobs. Thus, the bill increases workers' compensation costs for employers and insurers, including the State, Chesapeake, local governments, and small businesses, under any such circumstances.

For the State, the Department of Budget and Management (DBM) advises that only 5,257 State employees work for other employers in addition to the State of Maryland. Given this relatively small number of employees that may be affected, and the limited number of cases in which the enhanced benefits may apply, DBM anticipates that the bill has minimal impact on State expenditures. The magnitude of any such impact, however, cannot be reliably estimated at this time for local governments, small business employers, and other employers insured by Chesapeake, since the number of employees for each that may be affected by the bill is unknown. Nonbudgeted revenues for Chesapeake increase correspondingly to its additional costs to the extent that Chesapeake increases its premiums to account for the additional liability.

Additional Information

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

Designated Cross File: None.

Information Source(s): Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Department of Budget and Management; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland Association of Counties; Maryland Municipal League; Baltimore, Carroll, Harford, Queen Anne's, and St. Mary's counties; Town of Leonardtown; Department of Legislative Services

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km/ljm

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