HB 1455

Department of Legislative Services

Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1455 (Delegate Arentz)
Economic Matters

Workers' Compensation - Average Weekly Wage - Multiple Employers

---

This bill modifies the manner in which a covered employee's average weekly wage must be calculated when an employee is concurrently employed by more than one employer, suffers either a *temporary* partial or *temporary* total disability, and other specified requirements are met. In such a case, the average weekly wage must be calculated by combining the weekly wage from all of the covered employee's employments. The bill requires these additional benefits to, ultimately, be paid by the Uninsured Employers' Fund (UEF) or Subsequent Injury Fund (SIF) using a specified process. The bill must be construed to apply retroactively to increase existing compensation benefits being paid on the bill's October 1, 2025 effective date, as specified.

Fiscal Summary

State Effect: Special fund expenditures increase, potentially significantly, for SIF to reimburse employers for the additional wage replacement benefits paid under the bill and to the extent that SIF incurs administrative costs to establish a new process to do so beginning in FY 2026. Otherwise, the bill is not anticipated to materially affect State operations or finances, as discussed below.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: The bill is not anticipated to materially affect Chesapeake operations or finances, as discussed below.

Local Effect: The bill is not anticipated to materially affect local government operations or finances, as discussed below.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Multiple Employers – Calculation of Average Weekly Wage

The bill applies for a covered employee who (1) has suffered either a temporary partial or temporary total disability; (2) was concurrently employed by more than one employer at the time of the accidental personal injury; and (3) as a result of the injury, is unable to work at *any* employment the covered employee was engaged in at the time of the injury or any similar type of employment.

Under these circumstances, the weekly wages from the employments the covered employee was engaged in at the time of the accidental personal injury must be combined for the purposes of computing the average weekly wage of the covered employee. These requirements may not be interpreted to:

- except as otherwise provided, relieve the employer in whose employment the accidental personal injury occurred from liability to pay compensation; or
- create liability to pay compensation on the part of another employer in whose employment the accidental personal injury did not occur.

Existing requirements that govern the calculation of the average weekly wage for certain law enforcement officers and firefighters under specified circumstances only apply when the multiple employment calculation required by the bill results in a lower average weekly wage for the covered employee (*i.e.*, whichever calculation results in the higher average weekly wage calculation applies).

Payment of the Additional Claims and Reimbursement

When additional compensation must be paid for an individual with multiple employers under the bill, the employer in whose employment the accidental personal injury occurred, or the employer's insurer must initially pay the covered employee's weekly compensation.

SIF or UEF must then reimburse the employer or the insurer for the amount of weekly compensation paid that is based on the weekly wages of the covered employee at other employment. Specifically, the fund with the higher balance at the beginning of the fiscal year must pay the reimbursement.

This obligation of SIF or UEF to reimburse an employer or the employer's insurer is subject to a right of SIF to be impleaded or a right of SIF or UEF to defend in a case involving payment from SIF or UEF as allowable by Workers' Compensation Law.

Application to Existing Claims

The bill must be construed to apply retroactively to all active workers' compensation claims awarded for temporary partial disability or temporary total disability and for which benefits are being paid as of the bill's October 1, 2025 effective date.

The Workers' Compensation Commission (WCC) must recalculate the average weekly wage of any such covered employee and, if the recalculation results in a higher weekly compensation, the employee's compensation must be increased beginning with the first payment of compensation that is due on or after the bill's October 1, 2025 effective date.

Current Law: For general information on the State's workers' compensation system, UEF, SIF, and recent financial difficulties faced by UEF, please see the **Appendix – Workers' Compensation, the Uninsured Employers' Fund, and the Subsequent Injury Fund.**

Average Weekly Wage – Generally

Wage replacement benefits paid to an injured employee through the workers' compensation system are based on the employee's average weekly wage 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 average weekly wage. 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 his or her average weekly wage, but that amount may not exceed 16.7% of the State average weekly wage; the State average weekly wage for 2025 is $1,493. The maximum weekly benefit payable for each type of compensation award can be found on WCC's website.

In general, the average weekly wage must be computed by determining the average of the weekly wages of the covered employee (1) when the employee is working full time and (2) at the time of the employee's accidental personal injury or last injurious exposure to the hazards of an occupational disease. For purposes of this computation, wages include tips as well as the reasonable value of housing, lodging, meals, rent, and other similar advantages that the employee received from the employer. However, additional factors must be considered in the calculation for specified individuals, including, among others, certain law enforcement officers, firefighters, students with disabilities, and incarcerated individuals.

Average Weekly Wage – Multiple Employers

The average weekly wage must be calculated differently when an employee (1) has suffered a serious *permanent* partial disability or *permanent* total disability; (2) was concurrently employed by more than one employer at the time of an accidental personal injury; (3) worked, on average, 20 hours per week or less in the employment in which the accidental personal injury occurred; and (4) as a result of the injury, is unable to work at any employment the covered employee was engaged in at the time of the accidental personal injury or any similar type of employment.

Under these circumstances, the employee's average weekly wage is calculated based on the job where the employee earns the most money, regardless of where the compensable injury occurred. Even so, the employer of the job where the injury occurred is still required to pay the wage replacement benefits. The employer is then reimbursed for the difference by SIF. For example, if an employer is required to pay weekly benefits of $180 instead of $160 due to the employee's other job, SIF reimburses the employer for the additional $20 per week. This calculation may not be interpreted to require the employee's wages be combined to determine the average weekly wage.

State/Chesapeake/Local/Small Business Expenditures:

Employers – Generally

Wage replacement benefits for injured employees who are concurrently working for more than one employer and meet the bill's other requirements increase because the bill requires the calculation for such an employee's average weekly wage to be computed using the combined wages of the employee from all employments. Absent the bill, such an employee's average weekly wage would be calculated using the average weekly wages at the employment where the injury occurred or, in limited circumstances, the higher wage from a single employment, as discussed above.

As such, workers' compensation costs for employers (such as the State itself, local governments, and small businesses) and workers' compensation insurers (such as Chesapeake) increase to the extent that these additional wage replacement benefits are paid. However, the bill requires either UEF or SIF to reimburse any employer or insurer that incurs such a cost for the amount paid beyond what would have been paid under current law. Thus, expenditures and revenues for employers in the State increase correspondingly, resulting in no net effect on employer finances over multiple years beyond minor timing differences between payments and reimbursements.

Employers – Unique Average Weekly Wage Calculations

Under current law, the average weekly wage of certain law enforcement officers and firefighters that work for State and local governments must be calculated in a unique manner to provide additional wage replacement benefits to the covered employee in the event of an accidental personal injury. The bill, however, requires these unique calculations to apply *only* if doing so would result in a higher average weekly wage than the calculation required by bill. Under current law, the State or local agency is responsible for additional payments beyond those required under the standard calculation. Under the bill, additional payments beyond those required under the standard calculation are fully offset by reimbursements from SIF.

As an illustrative example, assume an employer under current law is required to pay weekly benefits of $200 due to the unique calculation, compared to $160 under the standard calculation. The employer pays $200 weekly. Under the bill, the employer is instead required to pay weekly benefits of $220, but SIF must reimburse the employer for the difference between the standard calculation and the new payment, in this case, $220 - $160 = $60. The employer pays $220 weekly, but the net payment is $160 after SIF reimbursement.

Thus, workers' compensation expenditures for affected State and local agencies increase initially beyond what would have been paid under current law, but the revenues from SIF reimbursements may lead to a positive net effect on the finances of those agencies. However, any savings, if realized, are not anticipated to materially affect State or local government operations or finances.

Subsequent Injury Fund and Uninsured Employers' Fund

Either SIF or UEF must reimburse employers for the additional wage replacement benefits paid under the bill based on which agency has the higher fund balance when the benefits are paid. As discussed in more detail in the attached appendix, UEF has faced significant financial difficulties in recent years and often carries a fund balance of less than $10.0 million. However, SIF currently has a fund balance that exceeds $130.0 million and, as such, it is anticipated that SIF will be the agency required to make the reimbursement payments required by bill. Thus, special fund expenditures by SIF increase beginning in fiscal 2026 to reimburse employers for the additional wage replacement benefits paid and to the extent that SIF needs to establish a new administrative process to handle the reimbursements.

The ultimate impact on SIF could be significant. Nationally, about 5% to 6% of employed individuals have more than one job. However, a more precise estimate cannot be made without actual experience under the bill because it depends on numerous unknown factors including how many employees in the State work multiple jobs, the average wages of those employees, and whether those employees are injured and awarded workers' compensation benefits in the future. Additionally, WCC and Chesapeake do not have readily accessible data to determine how the bill may affect existing claims that could be modified when the bill takes effect on October 1, 2025.

Additional Information

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

Designated Cross File: None.

Information Source(s): Subsequent Injury Fund; Uninsured Employers' Fund; Workers' Compensation Commission; Chesapeake Employers' Insurance Company; Department of Budget and Management; Department of Natural Resources; Cecil County; Federal Reserve Bank of St. Louis; Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2025
caw/smr

Analysis by: Richard L. Duncan

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

Appendix – Workers' Compensation, the Uninsured Employers' Fund, and the Subsequent Injury Fund

Workers' Compensation – Generally

Generally, each employer in the State must secure workers' compensation for all covered employees of the employer by maintaining insurance with an authorized insurer or, in limited circumstances, through self-insurance. An individual is presumed to be a covered employee while in the service of an employer under an express or implied contract of apprenticeship or hire. To overcome the presumption of covered employment, an employer must establish that the individual performing services is an independent contractor in accordance with the common law or is specifically exempted from covered employment under the Maryland Workers' Compensation Act.

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 (UEF), as appropriate. Workers' compensation benefits include wage replacement, medical treatment, and vocational rehabilitation expenses.

Uninsured Employers' Fund and Subsequent Injury Fund – Generally

UEF and SIF are separate and distinct State agencies that each support the State's workers' compensation system in a different way. UEF directly pays a claimant's compensation benefits and medical expenses in the event that an injured employee who should be receiving workers' compensation benefits is not properly compensated by the employer or the employer's insurer (which may happen because the employer has not purchased workers' compensation insurance or becomes insolvent). SIF assumes the financial responsibility for a worker's preexisting disability should the worker sustain an accidental workplace injury, thereby encouraging the hiring of such workers.

UEF and SIF are both special funded, and their revenues are primarily derived from two assessments (one for each agency) on awards against employers or insurers for permanent disability or death and amounts payable by employers or insurers under settlement agreements. The SIF assessment also applies to payments made by the Property and Casualty Guaranty Corporation on behalf of insolvent insurers; however, this source of revenue is relatively minimal.

Recent Legislative Action to Address Uninsured Employers' Fund Financial Difficulties

UEF has faced significant financial difficulties in recent years. During the 2020 legislative session, the Department of Legislative Services projected that UEF would become insolvent without financial intervention. Consequently, Chapter 495 of 2020 temporarily adjusted the distribution of the assessments between UEF and SIF, providing UEF with an additional $4.0 million in fiscal 2021, before reverting to the previous distribution in subsequent years. **Exhibit 1** shows the distribution of the assessments under Chapter 495.

Exhibit 1
Distribution of Assessments to UEF and SIF under Chapter 495 of 2020
Fiscal 2020-2022 and Subsequent Years

	FY 2020	FY 2021	FY 2022+
SIF Assessment	6.5%	5.5%	6.5%
Base UEF Assessment	1.0%	2.0%	1.0%
Additional UEF Assessment	1.0%	1.0%	1.0%

SIF: Subsequent Injury Fund
UEF: Uninsured Employers' Fund

Notes: The distribution in fiscal 2022 has continued in future fiscal years under current law. UEF may implement its additional assessment when its reserves are inadequate to meet anticipated losses, as specified.

Source: Department of Legislative Services

Even with the additional funding provided by Chapter 495, UEF has continued to experience financial issues. To assist in addressing these issues, the General Assembly passed Senate Bill 216 of 2024 (enacted as Chapter 78) and used the Joint Chairmen's Report (JCR) to require the Workers' Compensation Commission (WCC) and UEF to form a workgroup to study and report on UEF's financial difficulties and possible solutions to ensure UEF's long-term financial health.

Chapter 78 increased the maximum penalty that WCC is authorized to impose on an employer who fails to secure and maintain workers' compensation insurance for its covered employees from $10,000 to $25,000. These penalties directly accrue to UEF; however, the aforementioned assessment has remained its primary funding source. In response to the JCR, UEF and WCC each prepared a separate report discussing UEF's financial difficulties and possible reforms, both legislative and administrative.