



Testimony of Chesapeake Employers' Insurance Company and Injured Workers' Insurance Fund in Opposition to Senate Bill 377

Senate Bill 377 proposes to amend how hearing loss is calculated under Labor and Employment, § 9-650 as well as adding tinnitus to the hearing loss percentage granted by the Workers' Compensation Commission. Additionally, Senate Bill 377 proposes to amend Labor and Employment, § 9-610 in order to clarify ordinary and accidental disability retirement offsets for workers' compensation.

In terms of the hearing loss calculation under Labor and Employment, § 9-650, Chesapeake Employers' Insurance Company and the Injured Workers' Insurance Fund found 115 claims related to Labor and Employment, § 9-650 from 2018 – 2022. The new calculations provided in the bill resulted in an overall increase in payment on the claims where prior audiology tests were available in the file. The average increase per claim equates to 5% permanent partial disability. (Not all claims include an increase, depending on the injured workers' age or years since last injurious exposure, increases ranged from 0% to 13.53%.) A 5% permanent partial disability increase would vary claim to claim in terms of dollar amounts but given that most hearing loss cases are public safety related, a 5% increase would equate to an average of \$9,465 per permanency award for the claims evaluated.

In terms of the addition of tinnitus to Labor and Employment, § 9-650, tinnitus is often awarded with hearing loss already, and Chesapeake Employers' Insurance Company and the Injured Workers' Insurance Fund do not see a significant impact on expenses based on same. With that said, there is concern that by the addition of tinnitus to the hearing loss section, injured workers that do not meet the threshold for hearing loss under Labor and Employment, § 9-650, would use tinnitus, which cannot be objectively determined, to reach the threshold. The average award of permanency granted for compensable tinnitus is currently 5%.

Of greater fiscal concern is the proposed amendment to Labor and Employment, § 9-610 as it is detrimental to ordinary and accidental disability retirement offsets for both the State and our counties/municipalities. Labor and Employment, § 9-610 applies to participating government units, quasi-public corporations, and ordinary disability retirements for State employees in which an offset for disability retirement is taken from the workers' compensation indemnity benefits (with some exceptions, accidental disability retirements for State employees are offset under State Personnel and Pensions, §29-118 and the offset is taken by MSRB). Under the law as it is written "similar benefits" require an overlapping body part with the accidental injury or occupational

disease and reason for disability retirement, as explained in *Zakwieia v. Baltimore County Board of Education* (231 Md. App. 644 (2017)) and *Reger v. Washington County Board of Education* (455 Md. 68 (2017)). Therefore, disability retirement offsets can be taken if the injured worker has a combination of accidental injuries and occupational diseases causing the disability retirement or if the injured worker has a combination of accidental injuries/occupational diseases and other non-work related pre-existing or subsequent medical issues. The proposed language in Labor and Employment, § 9-610 is written in such a way that disability retirements that include a number of accidental injuries or occupational diseases or a combination of work and non-work related accidents or medical issues would be ineligible for an offset, providing for duplicate payments by Chesapeake Employers' Insurance Company and the Injured Workers' Insurance Fund and counties/municipalities and the State of Maryland State Retirement Benefits: essentially removing the purpose of the creation of Labor and Employment, § 9-610.

For the Injured Workers' Insurance Fund and Chesapeake Employers' Insurance Company, of the claims found from 2018 - 2022 with offsets that applied to Labor and Employment, § 9-610, only 27% of the claims would be eligible for an offset based on the amendment. Offsets range from a complete offset to a deduction in weekly benefits to the injured worker, and therefore, we are unable to accurately account a total fiscal impact. With that said, two examples are below of the claims which would no longer have an offset:

- 1) Injured worker injured their right hip in a work-related accident and then applied for an accidental disability retirement. They were denied the accidental disability retirement, but granted an ordinary disability retirement, causing an offset under Labor and Employment, § 9-610. The retirement board awarded the ordinary disability retirement because of the injured workers' idiopathic avascular necrosis of the hips and a hip replacement with complications (both a pre-existing condition and the accidental injury). The offset is \$162.42 weekly and covers both a temporary total period as well as State of Maryland/Injured Workers' Insurance Fund and Subsequent Injury Fund permanent partial payments. Under the proposed bill, the injured worker would receive both his ordinary disability retirement and the full Commission award, an additional \$71,231.80 from the State of Maryland (both the Injured Workers' Insurance Fund and the Subsequent Injury Fund), a duplicate payment of benefits.
- 2) Injured worker injured their head and back in a work-related accident and then applied for an accidental disability retirement. They were denied the accidental disability retirement but granted an ordinary disability retirement by the retirement board because of chronic and acute radiculopathy (both a pre-existing condition and the accidental injury). This case created a complete offset for workers' compensation benefits that would otherwise be fully paid under the proposed bill while the injured worker also receives ordinary disability retirement. (Due to the complete offset, permanency was never pursued, and the file has a \$10,739.94 credit from temporary total benefits paid while the retirement process was being completed.)

Due to the increase of benefits under Labor and Employment, § 9-650 for hearing loss calculation and the addition of tinnitus, and the significant impact of disability offsets under the proposed amendments to Labor and Employment, § 9-610, there would be a significant fiscal impact to the State and local governments should Senate Bill 377 pass. Therefore, Chesapeake Employers' Insurance Company and the Injured Workers' Insurance Fund must respectfully oppose the bill.

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