



Testimony of Chesapeake Employers' Insurance Company and Injured Workers' Insurance Fund in Opposition to Senate Bill 538

Senate Bill 538 proposes to amend Labor and Employment, § 9-503 by way of removing the need for disablement for firefighters (paid and volunteer) and various advanced life support units (paid and volunteer) with their hypertension diagnosis under Labor and Employment, § 9-503.

The Injured Workers' Insurance Fund and Chesapeake Employers' Insurance have many claims related to hypertension under Labor and Employment, § 9-503 since the inception of the presumption. From 2018 – 2022, the Injured Workers' Insurance Fund and Chesapeake Employers' Insurance had 213 filed claims that included hypertension with an average cost per claim of \$42,631.73. With that said, we have very little data if these claims would be different should no disablement be needed to file the claims as most of these claims filed come with a disablement from a physician (even if it is a very limited disablement for a new medication). Very few claims are denied based on lack of disablement, and if they are, an injured worker is eligible to refile a new claim once they have disablement.

Of concern with this bill is that it creates a conflict with several other parts of the Labor and Employment Code as disablement is the Act's defining characteristic for statute of limitations purposes and to ascertain the liable employer and insurer. An occupational disease, by definition in Labor and Employment, § 9-101, "means a disease contracted by a covered employee: (1) as a result of and in the course of employment; and (2) that causes the covered employee to become temporarily or permanently, partially or totally incapacitated". (Incapacitation and disablement are equivalents via case law.) Without disablement, Labor and Employment, § 9-711 is invalidated for purposes of the statute of limitations (the employee shall file a claim within 2 years of disablement or when the covered employees/their dependents had actual knowledge the disablement was caused by employment). More importantly, disablement also establishes the responsible employer and insurer under Labor and Employment, § 9-502. Currently, the employer and insurer that is liable for payment of compensation is the one whom employed the injured worker where they were last injuriously exposed before the date of disablement. (*See CES Card Establishment Services v. Doub*, 104 Md. App. 301 (1995)).

Without disablement, employers and insurers would not be aware of whom is the responsible party. This has the potential to create chaos in litigation with an undue burden on the injured workers' last employer. The increased costs (and thereby increasing premium/reserves) would particularly

affect the municipalities and counties with volunteer firefighters as many volunteers were paid firefighters in other jurisdictions before retirement/volunteer firefighting.

Therefore, Chesapeake Employers' Insurance Company and the Injured Workers' Insurance Fund must respectfully oppose Senate Bill 538.

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