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BILL: Senate Bill 0377
TITLE: Workers' Compensation – Benefits – Offset and Hearing Loss
DATE: February 21, 2023
POSITION: FAVORABLE WITH AMENDMENTS
COMMITTEE: Finance Committee
CONTACT: Milton E. Nagel, CPA, Insurance Program Administrator

The Maryland Association of Boards of Education (MABE) Workers' Compensation Fund "Fund" respectfully requests to strike the offset provisions within Senate Bill 0377.

The Fund provides workers' compensation coverage to 17 of the 24 school districts in Maryland. The Fund provides coverage to just school districts in Maryland, no other entities, or businesses. Over 40,000 employees of those school systems are covered under this program.

The cost of the claims handled by the Fund has continued to increase over time, resulting in underwriting losses. To cover those losses member school districts' premium contributions have necessarily increased from one year to the next.

Members of the Fund and the other school districts in Maryland that are not in the Fund have achieved some relief under the Workers' Compensation statute at issue (§9-610, Labor and Employment Article), which allows them to offset workers' compensation indemnity payments owed when an injured worker is being paid a similar ordinary disability retirement benefit. The claims involving these offsets are typically large expensive workers' compensation claims where the savings to the school system can be substantial.

Senate Bill 377, in part, proposes to amend Labor and Employment, § 9-610 to significantly narrow the circumstances under which governmental employers are entitled to take an offset when paying workers' compensation indemnity benefits to an employee who is receiving a *similar* benefit provided by the employer, albeit by differing means (i.e. leave, sick pay, disability retirement, disability policy, etc.).

Labor and Employment, § 9-610 applies to participating government units, including members of the County Boards of Education ("BOE") and allows a governmental employer to take an offset of benefits regardless of whether part of a pension system of similar benefits (except as provided for under S.P.P. §29-118 which allows MSRB to take the offset instead in certain circumstances). The law as written and interpreted by the courts defines *similar benefit* to mean those benefits which accrue by virtue of the work injury. *Reger v. Washington County Board of Education* (455 Md. 68 (2017)).

An example of a benefit that is **always similar** to a workers' compensation benefit is an accidental disability retirement benefit granted to an employee for an on-the-job injury. The case of *Spevak v. Montgomery Cty.*, 480 Md. 562, 281 A.3d 171 (2022) held that if an employee receives a service-connected disability retirement benefit from the County, the employee cannot also receive a workers' compensation benefit from the County to the extent that the payment of the disability retirement benefit exceeds the weekly workers' compensation benefit. The county in



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this case was allowed the offset regardless of the fact that the disability retirement was for the back and the workers' compensation case was for hearing loss, because otherwise, the employee would receive a windfall of double benefits as the disability retirement is meant to cover the employee for all work-related injuries.

A second example of a benefit that **is similar** is an ordinary disability benefit granted to an employee who was denied accidental disability retirement for a compensable on the job injury (i.e. the back) because state rules governing the grant of an accidental disability retirement benefit are different than those allowing for workers' compensation benefits. Under *Reger*, because both benefits arose from the same injury (the back), the benefits were similar, allowing the Board of Education to take an offset and preventing a windfall to the Claimant by payment of duplicate benefits.

The proposed amendment to 9-610 would essentially eliminate the ability of governmental employers to take offsets of applicable accidental disability retirement benefits for multiple injuries addressed by *Spevak* and would entirely eliminate the ability to take an offset of ordinary disability retirement benefits confirmed as similar under *Reger*. To allow this change would place undue burden on the public treasury and in particular the Boards of Education by providing double benefits to an employee for the same injury. This is counter to the intent of the legislature in adopting the Workers' Compensation Act in its inception in 1914 through the present day.

The MABE Workers' Compensation Group Self-Insurance Fund and its 17-member school districts should not lose these cost savings and for these reasons requests to strike the offset provisions contained within Senate Bill 377.