

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 767 (Delegate Valderrama)
Economic Matters

Workers' Compensation - Fees for Legal Services

This bill authorizes the Workers' Compensation Commission (WCC) to order a fee of up to \$2,000 be paid for legal services rendered on behalf of a covered employee if no compensation is payable to the covered employee. WCC may order the fee to be paid by (1) the covered employee; (2) the employer or its insurer; (3) a self-insured employer; or (4) the Uninsured Employers' Fund (UEF).

Fiscal Summary

State Effect: State expenditures (all funds) increase to the extent WCC orders the legal service fee to be paid by employers or their insurers, and special fund expenditures increase to the extent UEF is ordered to pay the fee; the magnitude of this effect cannot be reliably estimated. Special fund expenditures by WCC increase to the extent that the bill results in a significant amount of additional hearings before WCC; however, any such impact cannot be reliably predicted. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures increase to the extent WCC orders the legal service fee to be paid by insurers; the magnitude of this effect cannot be reliably estimated. Revenues are not affected.

Local Effect: Local government expenditures increase to the extent WCC orders the legal service fee to be paid by employers or their insurers, or by self-insured local governments; the magnitude of this effect cannot be reliably estimated. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Workers' Compensation – Generally

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, or UEF, as appropriate. Workers' compensation benefits include wage replacement, medical treatment, and vocational rehabilitation expenses. Wage replacement benefits are calculated based on the covered employee's average weekly wage while medical benefits are generally fully or partially covered depending on how the treatment is related to the personal injury, hernia, or occupational disease.

If a covered accident or occupational disease results in the death of the covered employee, then the employee's dependents are entitled to workers' compensation death and funeral benefits. Similar to wage replacement benefits, death benefits are calculated using the covered employee's average weekly wage. The duration of benefits and total benefits allowed depend on if the dependents were partially or wholly dependent on the covered employee, among other factors.

Workers' Compensation Commission

WCC administers workers' compensation claims by processing and adjudicating all claims, maintaining a record of all contested cases, certifying a complete record to the judicial forum in case of an appeal, and referring those individuals requiring vocational rehabilitation to appropriate providers. WCC must also approve of any fee or other charge paid in relation to a claim for legal services, medical services, supplies or treatment, or funeral expenses. Any such fee paid from an award of compensation may only be paid in the manner set and approved by WCC.

State/Chesapeake/Local/Small Business Effect:

Employers and Insurers

The \$2,000 fee most likely applies in situations where a claimant had previously been awarded compensation and medical benefits and, sometime in the future, needed additional medical treatment for the injury after the compensation benefits have been exhausted. Since attorneys representing claimants are generally paid based on compensation benefits awarded (and not medical benefits), they are required to charge claimants directly for their

services under the current system. The bill establishes a mechanism for claimant attorneys to be paid under these circumstances by entities other than the covered employee.

WCC advises that, under the bill, it would most likely and most often require the employer or insurer (including those entities that are self-insured such as many local governments) to pay the \$2,000 fee established by the bill when necessary and appropriate. As such, expenditures for workers' compensation costs by employers and insurers, including the State, Chesapeake, local governments, and small businesses, increase beginning in fiscal 2021. Even so, the precise impact of the bill on employers and insurers cannot be reliably estimated as it depends on numerous unknown factors, including (1) how often WCC chooses to award the \$2,000 fee and (2) whether the establishment of the fee results in additional claims and hearings before WCC.

Chesapeake has identified 67 of its claims heard before WCC in the past five years that could have warranted payment of the fee established by the bill. While this number of claims is not significant (resulting in \$134,000 paid by many different employers and insurers over the five-year period), the total impact could be significant if many more claims are brought before WCC under the bill.

Workers' Compensation Commission

As previously discussed, the bill could result in a significant number of additional claims being brought before WCC. Depending on the total number of additional claims, special fund expenditures by WCC may increase for staff and administrative resources to handle the additional workload.

Small Business Effect: In addition to the effect described above, attorneys representing covered employees have a means of ensuring payment for certain services rendered.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 619 (Senator Klausmeier) - Finance.

Information Source(s): Workers' Compensation Commission; Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Department of Legislative Services

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mm/ljm

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