

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 10
Finance

(Senator Jackson)

Workers' Compensation - COVID-19 Occupational Disease Presumption

This emergency bill establishes an occupational disease presumption for a first responder or public safety employee or a health care worker, as defined by the bill, who tests positive for or is diagnosed with COVID-19 under specified circumstances. The bill must be construed to apply retroactively and must be applied to and interpreted to affect workers' compensation claims filed on or after March 1, 2020. **The bill terminates July 31, 2023.**

Fiscal Summary

State Effect: State expenditures (all funds) for various State agencies may increase, potentially significantly, beginning in FY 2022 due to the bill's establishment of a new occupational disease presumption. Revenues are not affected.

Chesapeake Employers' Insurance Company (Chesapeake) Effect: Chesapeake expenditures may increase, potentially significantly, beginning in FY 2022 as additional workers' compensation benefits are paid, primarily on local governments insured by Chesapeake. Revenues increase to the extent that premiums are raised due to claims experienced under the expanded occupational disease presumption.

Local Effect: Local expenditures increase, potentially significantly, beginning in FY 2022 due to the bill's establishment of a new occupational disease presumption. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “First responder or public safety employee” means (1) a career or volunteer member of a fire department, an ambulance company or squad, or a rescue company or squad, including a firefighter and an emergency medical technician; (2) a law enforcement officer; (3) a correctional officer; (4) a member of the Maryland National Guard; or (5) a sworn member of the State Fire Marshal’s Office. “Health care worker” means an individual whose primary place of employment is a facility licensed by the State as a health care facility or an individual employed in a health care, home care, or long-term care setting whose duties include direct patient care or ancillary work in areas where patients diagnosed with COVID-19 are treated.

A first responder, public safety employee, or a health care worker who is a covered employee is presumed to have an occupational disease that is compensable under workers’ compensation law if:

- on or after March 1, 2020, the individual tested positive for or was diagnosed with COVID-19 within 14 days after a day on which the individual performed labor or services at the individual’s primary workplace or another assigned workplace (that is not the employee’s home) at the employer’s direction; and
- the test was performed or the diagnosis was made by a health care practitioner who is licensed, certified, or otherwise authorized by State law to perform the test or make the diagnosis.

The presumption is rebuttable with substantial evidence to the contrary that demonstrates that the employee tested positive for or was diagnosed with COVID-19 for reasons not arising out of and in the course of employment.

Current Law: Workers’ compensation law establishes a presumption of compensable occupational disease for certain public safety employees who are exposed to unusual hazards in the course of their employment. It is assumed that these injuries or diseases are due to the employees’ work and, therefore, require no additional evidence in the filing of a claim for workers’ compensation. As shown below, generally, presumptions are based on particular occupations and their associated health risks.

A covered employee who receives a presumption is entitled to workers’ compensation benefits in addition to any benefits that the individual is entitled to receive under the retirement system in which the individual participated at the time of the claim. However, the weekly total of workers’ compensation and retirement benefits may not exceed the weekly salary that was paid to the individual; any necessary adjustment is made against the workers’ compensation benefits.

<u>Type of Personnel/Occupation</u>	<u>Type of Disease</u>
Volunteer and career firefighters, firefighting instructors, rescue squad members, and advanced life support unit members; fire marshals employed by an airport authority, a county, a fire control district, a municipality, or the State	Heart disease, hypertension, or lung disease that results in partial or total disability or death Leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin’s lymphoma, brain, bladder, kidney or renal cell, testicular, or breast cancer under specified conditions
Police officers; deputy sheriffs, correctional officers, and detention officers of specified counties	Heart disease or hypertension that results in partial or total disability or death
Department of Natural Resources paid law enforcement employees and park police officers of the Maryland-National Capital Park and Planning Commission	Lyme disease under specified conditions

Although statute is silent on the issue, occupational disease presumptions have long been considered rebuttable presumptions. Two court decisions address the use of “is presumed” in reference to occupational diseases in current law, specifying that the term “without contrary qualification, should be read to be a presumption, although rebuttable, of fact.” (See *Board of County Commissioners v. Colgan*, 274 Md. 193, 334 A.2d 89 (1975); and *Montgomery County Fire Board v. Fisher*, 53 Md. App. 435, 454 A.2d 394, aff’d, 298 Md. 245, 468 A.2d 625 (1983).) However, the Court of Special Appeals has stated that, “after the last injurious exposure to a hazard and the conclusion of employment the nexus between an occupational disease and an occupation becomes increasingly remote.” (See *Montgomery County, Maryland v. Pirrone*, 109 Md. App. 201, 674 A.2d 98 (1996).)

State/Local/Small Business Expenditures: Any increase in expenditures for the State, local governments, and small businesses depends on (1) how many employees have previously contracted or will contract COVID-19 and consequently qualify for the occupational disease presumption and (2) whether any of those employees have received or would have received workers’ compensation for COVID-19 absent the bill. The Department of Legislative Services advises that a covered employee may still receive workers’ compensation for COVID-19 under current law; the presumptions established under the bill ensure no additional evidence is required to qualify for benefits.

State (all funds), local government, and small business expenditures increase beginning in fiscal 2022 due to the bill's expansion of the State's occupational disease presumptions. Many State employees, such as officers employed by the Department of State Police, correctional officers employed by the Department of Public Safety and Correctional Services, and health care personnel employed by the State-run hospitals, may be able to qualify for the occupational disease presumption established by the bill. Similarly, local governments employ large numbers of public safety officers through local law enforcement agencies and local fire departments. While small businesses do not generally employ public safety personnel, many small businesses employ health care workers that may be covered by the occupational disease presumption.

Given the retroactive application of the bill's occupational disease presumption and the potentially severe physical and mental health effects of COVID-19 and rate of hospitalization for the illness, the impact on State agencies, local agencies, and small businesses could be significant, depending on the number of claims experienced. *For illustrative purposes*, Chesapeake advises that, as of December 31, 2021, it has received 1,043 first reports of injury (many of which came from first responder or public safety employees) for COVID-related claims, but only 152 claims were filed with the Workers' Compensation Commission (WCC), totaling 107 State claims, 28 local government claims, and 17 private industry claims. Of these 152 claims:

- 111 were accepted by WCC;
- 12 were contested and are awaiting judicial review;
- 12 were withdrawn by the claimant;
- 7 are still being investigated; and
- 10 were denied by WCC.

For these 152 claims, Chesapeake has paid about \$721,700 to date (averaging \$4,750 per claim) but has reserved an additional \$2.8 million to pay for potential future benefits associated with the claims.

Chesapeake Fiscal Effect: As the administrator of workers' compensation claims for the State and the workers' compensation insurer for many local governments, Chesapeake anticipates more claims to be paid out due to the additional occupational disease presumptions beginning as early as fiscal 2022. Chesapeake revenues increase to the extent that premiums are raised due to claims experienced under the expanded occupational disease presumption.

Additional Information

Prior Introductions: Various bills were considered by the General Assembly during the 2021 legislative session that would have established an occupational disease presumption for COVID-19 for specific types of employees; however, none was passed by either the House or Senate.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Military Department; Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Maryland Association of Counties; Maryland Association of County Health Officers; Anne Arundel, Charles, Frederick, Montgomery, and Somerset counties; Maryland Municipal League; cities of Frederick and Havre de Grace; Department of Legislative Services

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