

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 406
Finance

(Senators Kagan and Jackson)

Workers' Compensation - Occupational Disease Presumptions - First Responders

This bill establishes a workers' compensation occupational disease presumption for first responders (as defined by the bill) who are diagnosed with post-traumatic stress disorder (PTSD) by a licensed psychologist or psychiatrist and meet other specified requirements.

Fiscal Summary

State Effect: State expenditures (all funds) for various State agencies may increase beginning in FY 2024 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 beginning in FY 2024 to the extent that the bill results in additional workers' compensation benefits payments on behalf of county governments insured by Chesapeake. Revenues increase to the extent that premiums are raised as a result of claims experienced under the bill's occupational disease presumption.

Local Effect: Local government expenditures may increase beginning in FY 2024 due to the occupational disease presumption established by the bill. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The occupational disease presumption applies for a "first responder," meaning a (1) firefighter; (2) emergency medical services provider; (3) rescue squad member; (4) sworn member of the Office of the State Fire Marshall; (5) member of a

volunteer fire or rescue company who is a covered employee under Workers' Compensation Law; (6) a 9-1-1 specialist; (7) a law enforcement officer; or (8) a correctional officer.

To qualify for the presumption, a first responder must (1) be diagnosed with PTSD by a licensed psychologist or psychiatrist; (2) have completed at least two years of cumulative service within the State as a first responder; and (3) file a claim while employed as a first responder or within 18 months immediately following employment as a first responder. The presumption applies only to benefits for services related to PTSD for a period of two years immediately following the initial diagnosis.

The presumption does not limit any other workers' compensation right an individual may have or claim an individual may bring.

Current Law:

Occupational Disease Presumptions

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.

<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

<u>Type of Personnel/Occupation</u>	<u>Type of Disease</u>
Department of Natural Resources paid law enforcement employees, park police officers of the Maryland-National Capital Park and Planning Commission, forest rangers, park rangers, and wildlife rangers	Lyme disease under specified conditions

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.

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 (now the Appellate Court of Maryland) 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 Expenditures: Any increase in expenditures for the State and local governments depends on (1) how many employees are diagnosed with PTSD and consequently qualify for the occupational disease presumption and (2) whether any of those employees would have received workers’ compensation for PTSD absent the bill. The list of employees covered by the presumption include many State employees and local employees (for example, various State agencies and most local governments employ law enforcement officers). The Department of Legislative Services advises that a covered employee may still receive workers’ compensation for PTSD under current law; the presumption established under the bill ensures no additional evidence is required to qualify for benefits. Nevertheless, State and local expenditures may increase beginning in fiscal 2024 due to the new occupational disease presumption.

For illustrative purposes, Chesapeake advises that, from 2018 through 2022, it has experienced 281 claims (168 claims for the State and 113 claims for employers insured by

Chesapeake) that included a diagnosis of PTSD. While many PTSD claims arise concurrent with physical accidental injuries, Chesapeake estimates that the average cost for a stand-alone PTSD claim is \$29,045. This cost may be spread over multiple years, as an employee receives ongoing care and treatments.

Chesapeake Fiscal Effect: As the administrator of workers' compensation claims for the State and the workers' compensation insurer for many local governments, Chesapeake may experience more PTSD claims due to the newly established occupational disease presumption beginning in fiscal 2024. To the extent more claims occur, Chesapeake expenditures and revenues increase correspondingly as Chesapeake pays the additional claims and increases its premiums to account for the additional liability.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 335 (Delegate Hill) - Economic Matters.

Information Source(s): Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Workers' Compensation Commission; National Council on Compensation Insurance; University System of Maryland; Maryland Department of Transportation; Department of Public Safety and Correctional Services; Department of State Police; Department of General Services; Maryland Association of Counties; Maryland Municipal League; Worcester County; City of Laurel; Department of Legislative Services

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js/ljm

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