

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 750  
Finance

(Senator Corderman)

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Labor and Employment - Workers' Compensation - Exceptions to Exclusivity of Liability

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This bill allows a covered employee, or the employee's beneficiaries, to both file a claim for workers' compensation *and* sue the employer for damages when a covered employee is injured or killed as the result of the deliberate intent of the employer or when a covered employee is killed by the intentional action of another employee. The bill also establishes circumstances under which an employer must be deemed to have acted with deliberate intent. The bill must be construed to apply retroactively and must be applied to and interpreted to affect a cause of action arising or a workers' compensation claim filed on or after January 1, 2022.

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Fiscal Summary

**State Effect:** The bill is not anticipated to materially affect State operations or finances.

**Local Effect:** The bill is not anticipated to materially affect local government operations or finances.

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary/Current Law:**

*Workers' Compensation – Exclusive Remedy*

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

the Uninsured Employers' Fund, as appropriate. Workers' compensation benefits include wage replacement, medical treatment, and vocational rehabilitation expenses. Any workers' compensation claim for hearing loss must be measured using audiometric instruments that meet the technical requirements specified by workers' compensation law.

Under current law, workers' compensation is the *exclusive remedy* for a covered employee who has sustained an accidental personal injury, compensable hernia, occupational disease, or death (in which case specified beneficiaries may receive benefits) and an employee may not normally sue the employer for damages. However, an employer may be sued for damages if an injury or death occurs and the employer had not secured workers' compensation insurance for the employer's employees as required by State workers' compensation law. Likewise, an employer may be sued if a covered employee is injured or killed as the result of the deliberate intent of the employer to injure or kill the covered employee. In these circumstances, a covered employee or the employee's beneficiaries may bring a claim for workers' compensation *or* sue for damages, but not both. The bill makes three major changes to the provisions governing workers' compensation as an exclusive remedy for covered employees.

- First, the bill allows for a covered employee, or the employee's beneficiaries, to both bring a claim for workers' compensation *and* sue the employer for damages when a covered employee is injured or killed as the result of the deliberate intent of the employer.
- Second, the bill establishes that an employer is deemed to have acted with deliberate intent if the employer (1) acted in a manner that was premeditated or willful in causing the injury to or death of the covered employee or (2) had actual knowledge that an injury or death was substantially likely to occur and willfully disregarded that knowledge.
- Third, the bill authorizes a covered employee's beneficiaries, to both bring a claim for workers' compensation *and* sue the employer for damages when a covered employee is killed by the intentional action of another employee.

### *Maryland Tort Claims Act*

In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under the Maryland Tort Claims Act (MTCA), the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by State personnel performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially "waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort." *Lee v. Cline*, 384 Md. 245, 262 (2004).

MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

In general, MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. Higher liability limits apply to claims involving law enforcement officers that arise on or after July 1, 2022, and claims involving sexual abuse.

#### *Local Government Tort Claims Act*

In general, the Local Government Tort Claims Act (LGTC) limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). Higher liability limits apply to claims involving law enforcement officers that arise on or after July 1, 2022, and claims involving child sexual abuse.

LGTC further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with actual malice. Thus, LGTC prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

**Small Business Impact:** While the bill is not anticipated to affect most small businesses, it does allow a small business to be sued, as an employer, under certain circumstances, including for the intentional action of an employee, when such a lawsuit would not have been allowed under current law. Any such lawsuit could significantly affect the operations and finances of a small business.

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### **Additional Information**

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

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Subsequent Injury Fund; Uninsured Employers' Fund; Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2024  
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