

**Department of Legislative Services**  
Maryland General Assembly  
2024 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 431  
Finance

(Senator Waldstreicher, *et al.*)

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**Workers' Compensation - Occupational Disease Presumption - Long COVID**  
**(Home of the Brave Act of 2024)**

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This emergency bill establishes an occupational disease presumption for a governmental essential worker who tested positive for or was diagnosed with COVID-19 between March 5, 2020, and July 15, 2021, has subsequently been diagnosed with long COVID (as defined by the bill), and meets other specified requirements. 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 5, 2020.

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**Fiscal Summary**

**State Effect:** State expenditures (all funds) may increase beginning as early as FY 2025 depending on how many additional claims are filed under the occupational disease presumption established by the bill, as discussed below. Revenues are not affected.

**Chesapeake Employers' Insurance Company (Chesapeake) Effect:** Chesapeake expenditures may increase, beginning as early as FY 2025, as additional workers' compensation benefits are paid, primarily on claims for local governments insured by Chesapeake. Chesapeake revenues increase to the extent that premiums are raised due to claims experienced under the occupational disease presumption.

**Local Effect:** Local government expenditures may increase beginning as early as FY 2025 depending on how many additional claims are filed under the occupational disease presumption established by the bill, as discussed below. Revenues are not affected.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** “Governmental essential worker” means an individual who, at the time of initial COVID-19 infection was employed by a governmental entity (generally meaning a State or local agency or instrumentality of the State or a political subdivision of the State) and during a declared state of emergency (1) performed labor or services at a work site that could not be performed remotely or (2) was required to be at a work site. A governmental essential worker is presumed to be suffering from an occupational disease that was suffered in the course of employment and is compensable if:

- on or after March 5, 2020, but before July 15, 2021, the individual tested positive for or was diagnosed with COVID-19 within 14 days after a day the individual performed labor or services at the individual’s primary workplace or another assigned workplace that was not the individual’s home at the employer’s direction;
- the test was performed or the diagnosis was made by a health care practitioner who was licensed, certified, or otherwise authorized under State law to perform the test or make the diagnosis; and
- the individual has subsequently been diagnosed with long COVID by a health care practitioner licensed, certified, or otherwise authorized under State law to make the diagnosis.

The presumption established by the bill is rebuttable with substantial evidence to the contrary that demonstrates that the individual tested positive for or was diagnosed with COVID-19 or long COVID 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.

| <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.<br><br>Leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin’s lymphoma, brain, bladder, kidney or renal cell, testicular, or breast cancer under specified conditions. |

| <u>Type of Personnel/Occupation</u>   | <u>Type of Disease</u>  |
|---|---|
| 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, 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 how many additional employees receive workers' compensation benefits for COVID and long COVID under the new occupational disease presumption, which cannot be reliably estimated without actual experience under the bill. However, Chesapeake advises that COVID-19 claims have largely been accepted by the Workers' Compensation Commission (WCC) and, thus, Chesapeake anticipates a minimal increase in total claims due to the occupational disease presumption established by the bill. (Chesapeake has only experienced 15 COVID-19 claims being ultimately denied by WCC while paying for 234 other claims.)

Other State and local agencies that responded to a request for information for this fiscal and policy note generally indicated that the bill was not anticipated to affect their finances, in some cases citing similar reasoning as Chesapeake. Other entities, including the Department of Public Safety and Correctional Services and the Maryland Municipal League, advise that that the bill could have a potentially significant impact depending on how many additional claims are filed retroactively under the occupational disease presumption established by the bill.

*For illustrative purposes only*, Chesapeake advises that it has paid or is paying for 234 claims (148 State claims, 47 local claims, and 39 private claims) for COVID-19, some of which also involve diagnosis and treatment for long COVID. Chesapeake has, thus far, paid \$2.9 million in benefits for these claims (averaging \$12,390 per claim) and has reserved an additional \$3.4 million for future costs associated with the claims (averaging an additional \$14,428 per claim).

**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 additional claims due to the occupational disease presumption established by the bill beginning as early as fiscal 2025. Chesapeake revenues increase correspondingly to the extent that premiums are raised to account for the additional liability.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has been introduced within the last three years. See SB 10 of 2022. Additionally, 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.

**Designated Cross File:** None.

**Information Source(s):** Chesapeake Employers' Insurance Company; Subsequent Injury Fund; Uninsured Employers' Fund; Maryland Department of Transportation; Maryland Institute for Emergency Medical Services Systems; Department of General Services; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Association of County Health Officers; Maryland-National Capital Park and Planning Commission; Maryland Association of Counties; Maryland Municipal League; Anne Arundel and Prince George's counties; City of Annapolis; Department of Legislative Services

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