

NJ Senate Bill 929 Could Increase Costs for Employers

Over vociferous objections from the New Jersey Chamber of Commerce, the New Jersey Food Counsel and the New Jersey Business Industry Association, the New Jersey State Senate passed Senate Bill 929, which concerns certain workers' compensation supplemental benefits.

If fully implemented, the bill is anticipated to cost \$58 million dollars annually in fiscal year 2018, according to the Office of Legislative Services. All costs are to be offset by additional surcharges levied on certain workers' compensation policy holders and self-insured employers that are deposited into the Second Injury Fund.

The bill provides (from July 1, 2015 forward) an annual cost of living adjustment (COLA) in the weekly workers' compensation benefits rate for workers rendered totally and permanently disabled from a work place injury, and for the surviving dependents of any worker who dies from a work place injury (dependency benefit). The COLA would be an amount such that when added to the workers' compensation weekly benefit rate initially awarded, the sum would bear the same percentage relationship to the maximum benefit rate at the time of the adjustment at the initial rate or to the maximum rate at the time of the initial award except:

- The amount of the adjustment is reduced as necessary to ensure that the sum of the adjustment and the amount initially awarded does not exceed the amount which would cause any reduction of Social Security Disability Benefits;
- The Bill reduces supplemental workers' compensation benefits for petitioner's injured after 1979 by the amount of any Social Security Disability Benefits, black lung benefits or employer share of disability pension payments received from or on account of an employer;
- The Bill requires that the COLA benefits will not be paid to any individual who elects not to receive benefits under the Federal Old Age & Survivor Disability Act.

The current law only requires annual adjustment in the rate of workers' compensation benefits for death and total disability to be paid from the Second Injury Fund (SIF), but only for those cases of injury or death occurring before January 1, 1980.

This bill extends those adjustments paid from the Second Injury Fund to claims originating after December 31, 1979, although the adjustments would apply only to benefits paid on those claims after July 1, 2015.

It is proposed that the special adjustment be phased in, in increments over a three year period to "avoid an abrupt fiscal impact on the workers' compensation system." One- third of the special or supplemental benefit rate paid during the first year, two-thirds of the rate being paid during the second year and the full amount being paid during the third and subsequent years.

The bill contains strict time limits for workers' compensation insurance carriers and self-insured employers to notify the Second Injury Fund when a supplemental workers' compensation benefit is required under the bill. An insurer or self-insured employer is required to provide notice not more than 60 days after the supplement is awarded over a voluntary payment has begun and failure to notify the Second Injury Fund results in the insurer or employer being required to make the payment until such required notice is provided.

Interestingly, both the State of New Jersey and Municipal entities insured under a joint insurance fund are not required to make a payment into the Second Injury Fund. All other employers in the State of New Jersey are required to make payments into the Second Injury Fund through a direct annual surcharge in the amount equal to .125 percent of the expected benefits to be paid in the upcoming year.

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Currently, the Second Injury Fund annual surcharge levied on all non-exempt policy holders stands at 6.5 percent. It is estimated by the New Jersey Chamber of Commerce that this surcharge will increase and the cost of the supplemental benefit will likely be mostly funded by private employers.

There is an additional issue concerning the cost of this supplemental benefit, since it has been noted by New Jersey Manufacturers (one of the largest workers' compensation insurers in New Jersey) that in 2009 the Department of Labor put the total cost for a surcharge to pay for a supplemental benefit of this type to be between \$126 to \$151 million per year. Currently, employers are paying \$234.8 million to the Second Injury Fund on a yearly basis.

At present, there is no companion bill in the General Assembly. As of this writing, the Governor's office has not taken an official position on this Senate Bill.

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