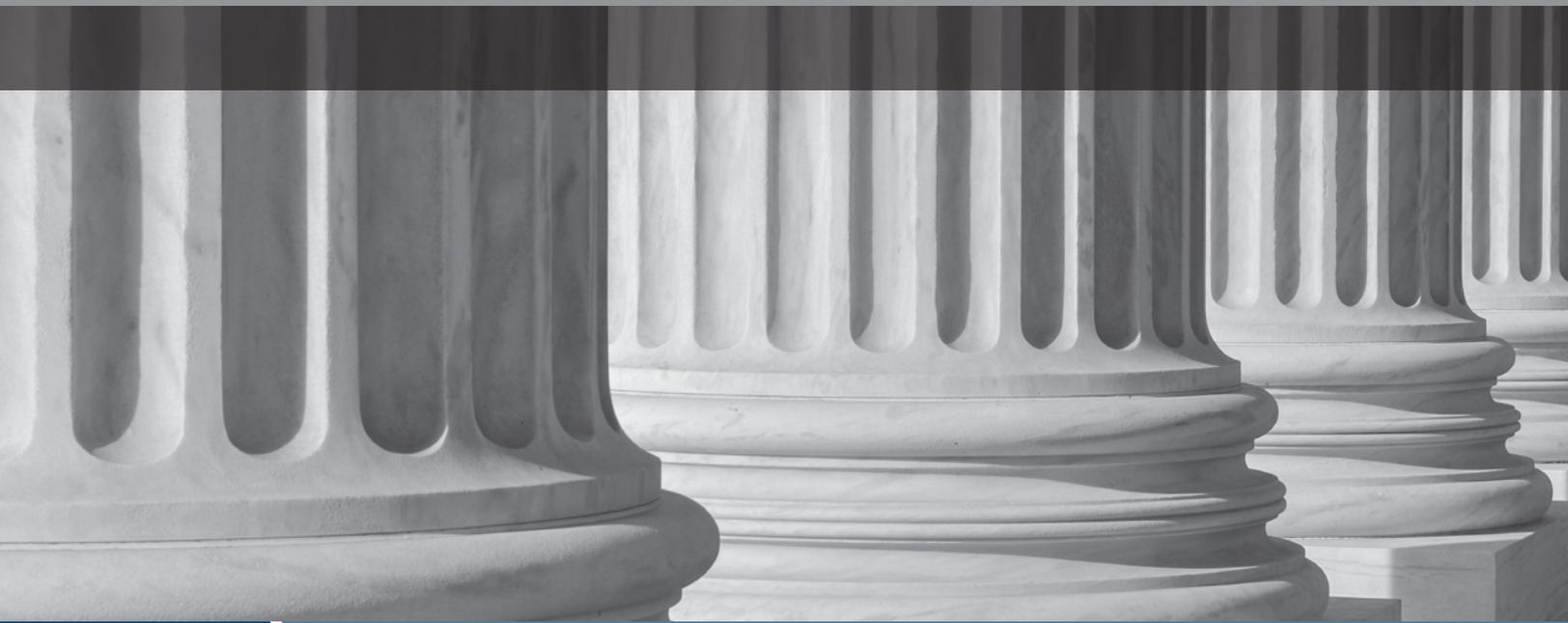


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MARYLAND Overview of Workers' Compensation Law

AN OVERVIEW OF MARYLAND WORKERS' COMPENSATION LAW

MARYLAND WORKERS' COMPENSATION STATUTE

What is the citation for the state's workers' compensation statute?

Maryland Labor and Employment Code Annotated § 9-101 et seq.; Code of Maryland Regulations (COMAR) Title 14, § 09.01.00 et seq.

SCOPE OF COMPENSABILITY

Who are covered "employees" for purposes of workers' compensation?

Any regular payroll employee is a covered employee while in the service of an employer. Md. Lab. & Empl. Code Ann. § 9-202. Individuals over whom an employer has sufficient control are covered employees. *Whitehead v. Safway Steel Prods, Inc.*, 304 Md. 67, 497 A.2d 803 (1985). In addition, covered employees of a subcontractor are potential "statutory employees" of the principal contractor. Md. Lab. & Empl. Code Ann. § 9-508.

Identify and describe any "statutory employer" provision.

A principal contractor is liable to pay benefits to a covered employee of a subcontractor if the subcontractor does not have sufficient workers' compensation coverage. Md. Lab. & Empl. Code Ann. § 9-508.

What type of injuries are covered and what is the standard of proof for each:

A. Traumatic or "single occurrence" claims.

An "accidental personal injury" must arise from a specific traumatic event that arises out of and is in the course of employment. Md. Lab. & Empl. Code Ann. § 9-101(b); *Schemmel v. T.B. Gatch & Sons Contracting & Building Co.*, 164 Md. 671, 166 A. 39 (1933). *Harris v. Howard County Board of Education*, 375 Md. 21, 825 A.2d 365 (2003), modified the previous standard so that it is no longer particularly important whether an injury results from some unusual strain or exertion or some unusual condition of the employment. Rather, while an injury must still be accidental, that is, result from some unexpected cause or be an unexpected result, and while the injury must be definite and causally related to the employment, the fact that the employee was doing customary or routine duties when injured will not prevent compensability. Previously, only unexpected causes, and not simply unexpected results, were deemed to be "accidental injuries."

Benefits are available if a new accidental injury simply aggravates a pre-existing condition, but apportionment is available for permanency.

B. Occupational disease (including respiratory and repetitive use).

Maryland specifically recognizes occupational diseases of a gradual and insidious nature. The occupational disease must be caused by, not simply aggravated by, the employment. The employer/insurer of last injurious exposure is responsible for the entire claim. Md. Lab. & Empl. Code Ann. § 9-502.

What, if any, injuries or claims are excluded?

Following the decision in *Harris v Howard County Board of Education*, 375 Md. 21, 825 A.2d 365 (2003), removing the “regular job” exclusion, injuries or claims that are now excluded are self-inflicted injuries, willful misconduct or “horseplay,” and injuries caused solely by drugs and/or alcohol. See Md. Lab. & Empl. Code Ann. § 9-506.

What psychiatric claims or treatments are compensable?

An employee may recover benefits and medical expenses for harm resulting from an accidental personal injury. Md. Lab. & Empl. Code Ann. § 9-660(a)(1). The Maryland Court of Appeals has held that purely emotional or psychological harm, unaccompanied by physical injury, may be compensable if caused by an accidental injury. *Belcher v. T. Rowe Price*, 329 Md. 709, 621 A.2d 872 (1993).

In Davis v. Dynacorp, 336 Md. 226, 647 A.2d 446 (1994), an employee filed a claim for an alleged occupational disease of mental disorder resulting from harassment by management and co-workers. The Court of Appeals rejected the compensability of the claim because the alleged mental disorder was not due to the nature of an employment in which hazards of the alleged occupational disease exist. The Court, however, expressly refused to rule out the possibility that some gradually resulting, purely mental diseases (without physical harm) could be compensable occupational diseases or that there may be circumstances where work-induced stress may result in a compensable occupational disease.

The Maryland Court of Appeals then decided *Means v. Baltimore County*, 344 Md. 661, 689 A.2d 1238 (1997) finding that a post-traumatic stress disorder may be compensable as an occupational disease if the employee presents sufficient evidence to meet the statutory requirements. The case was remanded to the Circuit Court for further determination as to whether the employee had contracted post-traumatic stress disorder, whether it arose out of and in the course of her employment, and whether the nature of her employment as a paramedic regularly exposed to grisly accident scenes entails the hazard of developing post-traumatic stress disorder.

The Court of Appeals revisited this issue in *King v. Prince George's County*, 354 Md. 369 (1999). The Court went to great lengths to distinguish the facts of *King* from those in Maryland's seminal "mental/mental" claim, *Means v. Baltimore County*. In *Means*, the claimant, a paramedic, alleged the occupational disease of post-traumatic stress disorder, (PTSD), as a result of responding to several fatal accident scenes. The Court of Appeals held that this claim was potentially compensable as the nature of Claimant's employment exposed her to events that could cause PTSD.

In *King*, however, the Court of Special Appeals found that the stresses that caused the Claimant's alleged disease were not particular to her employment. Her difficult working conditions were held to be "...pervasive across many types of occupations and are not uniquely characteristic of any particular occupation." Consequently, the Court held the claim had been properly denied.

What are the applicable statutes of limitations?

The period of limitations for filing a claim is generally two years from the date of accidental injury, Md. Lab. & Empl. Code Ann. § 9-709(b)(3); 18 months from the date of death from an accidental injury, Md. Lab. & Empl. Code Ann. 9-710(b); or, in the case of occupational disease, two years (three years in pulmonary dust disease case) from disablement or death, or from the date the employee first knew the disability was caused by the employment, Md. Lab. & Empl. Code Ann. § 9-711. In accidental injury claims, the limitation period is tolled by failure to file an Employer's First Report of injury if the injury resulted in compensable lost time of more than three days. Md. Lab. & Empl. Code Ann. §§ 9-707, 9-708. The employer/insurer may be "estopped" from raising limitations as a defense if they mislead the employee about the filing requirements.

What are the reporting and notice requirements for those alleging an injury?

An employee has ten days from the date of injury (or thirty days after death) within which to notify the employer. Md. Lab. & Empl. Code Ann. § 9-704. The employee must notify the employer within one year after he or she knows or has reason to believe that he or she has an occupational disease. Md. Lab. & Empl. Code Ann. § 9-705.

Describe available defenses based on employee conduct:

A. Self-inflicted injury.

Self-inflicted injuries are not compensable. Md. Lab. & Empl. Code Ann. § 9-506(a)(1). However, the law presumes injuries are not as a result of the employee's deliberate act and the burden is on the employer/insurer to prove the employee's intent to inflict the injury.

B. Willful misconduct, "horseplay," etc.

Injuries arising from willful misconduct or "horseplay" in which the employee actively participated are not compensable. Md. Lab. & Empl. Code Ann. § 9-506(e).

C. Injuries involving drugs and/or alcohol.

Injuries caused solely by intoxication or the effects of drugs not prescribed by a physician are not compensable. Md. Lab. & Empl. Code Ann. §§ 9-506(b), 9-506(c). Injuries caused where the primary cause is intoxication or the effects of drugs entitle Claimants only to medical benefits, unless the controlled dangerous substance was prescribed by a physician and the use was not excessive or abusive. Md. Lab. & Empl. Code Ann. § 9-506(d).

What, if any, penalties or remedies are available in claims involving fraud?

A person may not knowingly affect or attempt to affect the payment of compensation, fees, or expenses in a workers' compensation claim by means of a fraudulent representation. Md. Lab. & Empl. Code Ann. § 9-1106. Upon conviction, a violator is subject to criminal penalties (misdemeanor or felony, depending on the value of benefits involved) and may not receive compensation, fees or expenses. The provision applies not only to the employee, but also to any and all persons in the workers' compensation system, including attorneys, employers, insurers, etc., who affect payment by means of a fraudulent representation.

Furthermore, "if it is established by a preponderance of the evidence that a person has knowingly obtained benefits... to which the person is not entitled," the Commission must order the person to reimburse the provider of the benefits for the full value of the benefits, plus interest "at a rate of 1.5% per month from the date the Commission notifies the person of the amount to be reimbursed." Md. Lab. & Empl. Code Ann. § 9-310.1.

Is there any defense for falsification of employment records regarding medical history?

Compensation for an occupational disease is prohibited if the covered employee falsely represented in writing that he or she had not previously been disabled, laid off, or compensated due to the occupational disease. Md. Lab. & Empl. Code Ann. § 9-502(e). The Americans with Disabilities Act may, as a practical matter, eliminate this statutory defense.

Are injuries during recreational and other non-work activities paid for or supported by the employer compensable?

Injuries sustained during recreational or non-work activities may be compensable if the employer derived a benefit from the activity or sufficiently controlled or directed the employee's participation in it. *Sica v. Retail Credit Co.*, 245 Md. 606, 227 A.2d 33 (1967); *Turner v. State of Maryland*, 61 Md. App. 393, 486 A.2d 804 (1985). Injuries

involving traveling employees are compensable if the activity is a reasonable foreseeable activity incident to travel. *Gravette v. Visual Aids Electronics, et. al.*, 216 Md. App. 686 (2014).

Are injuries by co-employees compensable?

Yes.

Are acts by third parties unrelated to work, but committed on the premises, compensable (e.g. "irate paramour" claims)?

Yes. When an employee is attacked by a third party, it is only necessary to show that the incident arose "in the course" of the employment; i.e., while the employee was on the job. Md. Lab. & Empl. Code Ann. § 9-101(b); *Giant Food, Inc. v. Gooch*, 245 Md. 160, 225 A.2d 431 (1967).

BENEFITS

What criterion is used for calculating the average weekly wage?

The average weekly wage (AWW) is generally the gross average wage earned by the employee, including tips and overtime, during the 14 weeks before the accidental personal injury or last injurious exposure to the hazards of an occupational disease. Md. Lab. & Empl. Code Ann. § 9-602; COMAR 14.09.01.07. Periods of involuntary layoff or involuntary authorized absences are not included in the 14 weeks. COMAR 14.09.01.07. Only the wages from the responsible employer, and not other simultaneously held jobs, are considered. *Crowner v. Baltimore United Butchers Ass'n*, 226 Md. 606, 175 A.2d 7 (1961).

How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?

Temporary total disability benefits are paid at two-thirds of an employee's average weekly wage, not to exceed the state average weekly wage (SAWW). For 2022, the maximum rate is \$1,338.00 per week. The minimum compensation rate for temporary total disability is \$50.00 unless the employee's AWW is less than \$50.00. If this is the case, the actual AWW is paid. Md. Lab. & Empl. Code Ann. § 9-621.

How long does the employer/insurer have to begin temporary benefits from the date disability begins?

If the Commission finds that an employer/insurer has failed, without good cause, to begin paying an Award within 15 days, it may assess a fine of up to 20% of the amount overdue. The maximum fine rises to 40% if payments are 30 days late. Md. Lab. & Empl. Code Ann. § 9-728.

What is the "waiting" or "retroactive" period for temporary benefits (e.g. must be out days before recovering benefits for the first days)?

An employee must be out 14 days before recovering benefits for the first three days. Md. Lab. & Empl. Code Ann. § 9-620.

What is the standard/procedure for terminating temporary benefits?

The employer/insurer are entitled to unilaterally terminate temporary benefits when the employee achieves maximum medical improvement, based upon a medical exam or other good faith reason (e.g. surveillance), or when the employee is awarded permanency. *Jackson v. Bethlehem-Fairchild Shipyard*, 185 Md. 335, 44 A.2d 811 (1945). The employer/insurer may also terminate benefits when the employee returns to work or misses an IME scheduled on behalf of employer/insurer.

A. Termination of Indemnity Benefits

When is written notice required? An employer/insurer must notify claimant in writing regarding termination of indemnity benefits when: a) claimant is working for a new employer; b) no medical evidence supports continued payment (e.g. lack of ongoing disability slips); c) claimant fails to appear for an IME on behalf of employer/insurer; d) a doctor *other than* claimant's own treating physician has found MMI; or e) when otherwise supported by law.

When is written notice not required? An employer/insurer need not provide written notice of termination of indemnity benefits if: (a) claimant returned to his/her current employment; (b) claimant's own treating physician found MMI; or (c) termination occurs per a Commission order to do so.

What is written notice? To comply with the written notice requirement, an employer/insurer must: a) send claimant a completed Insurer's Termination of TTD Benefits Form ("C-6"), and b) send a copy of the C-6 to opposing counsel and the Commission.

B. Termination of Medical Benefits

When is written notice required? Always. Before terminating payment of medical benefits, employer/insurer must always notify: a) claimant, and b) claimant's treating physician or the health care provider of the date the medical benefits will be terminated. Thus, employer/insurer must always notify claimant in writing, but employer/insurer must then also notify either the treating physician or the health care provider in writing. Employer/insurer must also file a copy of the notification with the Commission.

Written notice of termination of medical benefits must include: a) the reasons for terminating medical benefits; b) a statement that the claimant has the right to request a

hearing before the Commission on the issue of termination; and c) be supported by a medical record or report attached to the notice.

Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?

No. Compensation for permanent partial disability is paid in addition to and consecutively with temporary total benefits, unless the Commission determines there has been an overpayment. Md. Lab. & Empl. Code Ann. § 9-631. Effective June 1, 2000, insurers are authorized, by statute, to take a credit for overpayment of temporary total disability benefits against an award of permanency benefits. Prior to June 1, 2000, the practice was commonplace, but was specifically disallowed by the Court of Appeals. *Sealy Furniture of Maryland v. Miller*, 356 Md. 462, 740 A.2d 594 (1999).

What disfigurement benefits are available and how are they calculated?

Mutilations and disfigurements resulting from a compensable injury, or resulting from treatment for the injury, are compensable in the discretion of the Commission. The maximum award for disfigurement is 156 weeks. Md. Lab. & Empl. Code Ann. § 9-627(i); *Bethlehem-Sparrows Point Shipyard, Inc. v. Damasiewicz*, 187 Md. 474, 50 A.2d 799 (1947).

How are permanent partial disability benefits calculated, including the minimum and maximum rates:

For injuries occurring on or after January 1, 1988, Maryland has adopted a three tier system for permanent partial disability benefits. In general, for permanency awards of less than 75 weeks, the compensation rate equals one-third of the employee's average weekly wage, up to a maximum set yearly. (2022 maximum is \$224.00). Md. Lab. & Empl. Code Ann. § 9-628. This "minor disability" rate does not apply to public safety employees or to injuries to fingers or the great toe. Md. Lab. & Empl. Code Ann. § 9-628.

For awards of 75 up to 249 weeks, the rate is two-thirds of the employee's average weekly wage, not to exceed a maximum set annually. (2022 maximum is \$446.00). Md. Lab. & Empl. Code Ann. § 9-629. The "serious disability" provision applies if the employee is entitled to 250 weeks or more of permanency benefits. For serious disability awards, the number of weeks of benefits is increased by one-third, and the compensation rate is two-thirds of the employee's average weekly wage, not to exceed 75% of the state average weekly wage. (2022 maximum is \$1,004.00). Md. Lab. & Empl. Code Ann. § 9-630.

- A. How many weeks are available for scheduled members/parts, and the standard for recovery.

The weeks awarded for loss of a scheduled member are as follows:

<u>Bodily Part</u>	<u>Maximum Weeks</u>
Thumb	100
Index finger	40
Middle finger	35
Ring finger	30
Little finger	25
Great toe	40
Other toes	10
Hand	250
Arm	300
Foot	250
Leg	300
Eye	250
Loss of hearing:	
One ear	125
Both ears	250

Md. Lab. & Empl. Code Ann. § 9-627.

B. Number of weeks for "whole person" and standard for recovery.

In all cases of permanent partial disability other than those listed as scheduled members ("other cases"), the Commission determines the industrial loss of use sustained by the employee. The award expresses the industrial loss of use as a percentage of loss of use of the whole body, which is 500 weeks. In determining industrial loss of use, the Commission considers evidence of anatomical disability, loss of wage-earning capacity, and the age, experience, occupation and training of the employee. Md. Lab. & Empl. Code Ann. § 9-627(k).

Are there any requirements/benefits for vocational rehabilitation, and what is the standard for recovery?

Yes. When an employee is physically disabled by compensable injuries from performing work for which he or she was qualified at the time of the injury, the employee is entitled to vocational rehabilitation. Md. Lab. & Empl. Code Ann. § 9-672. The employer/insurer pays the cost of the vocational rehabilitation assistance plus benefits as if the employee were temporarily totally disabled. Md. Lab. & Empl. Code Ann. § 9-674.

How are permanent total disability benefits calculated, including the minimum and maximum rates?

Permanent total disability payments are two-thirds of the employee's average weekly wage, not to exceed the state average weekly wage (\$1,338.00 in 2022). Md. Lab. & Empl. Code Ann. § 9-637. Payments are made at least until they reach a total of \$45,000.00, but continue beyond that amount for so long as the employee remains totally

disabled. Id.

How are death benefits calculated, including the minimum and maximum rates:

A. Funeral expenses.

Reasonable funeral expenses are payable, up to \$7,000.00. Md. Lab. & Empl. Code Ann. § 9-689.

- B. The actual amount of benefits received by the dependents of a covered employee is based on several factors, including the average weekly wage of the deceased and the percentage of the total earnings the deceased person contributed to the family income. The amount of benefits that may be paid to the dependents of a deceased employee cannot exceed the State average weekly wage or two-thirds of the employee's actual average weekly wage. An employee's average weekly wage is based on the employee's salary at the date of (1) disablement (in case of occupational diseases); or (2) the work-related accident that resulted in the employee's death.

In general, surviving dependent spouses and children receive their calculated benefits for at least 5 years and up to 12 years (624 weeks). There are several exceptions, as listed below:

- All dependent benefits terminate on the date the deceased would have reached 70 years of age, if five years of benefits have been paid;
- Surviving spouses who remarry may only collect benefits for two years after the date of the remarriage;
- Any dependents with a disability that predate the death of the deceased are paid benefits for the duration of the disability;
- All children of the deceased are paid benefits until they reach 18 years of age; and
- Children who are enrolled in approved and accredited academic programs may continue to receive benefits after age 18 – for up to five additional years.

Md. Lab. & Empl. Code Ann. § 9-683.3

What is the criteria for establishing a "second injury" fund recovery?

The Subsequent Injury Fund is responsible for paying the pre-existing portion of a permanency award only when the employee is entitled to a minimum of 125 weeks of benefits from the subsequent injury and 125 weeks from the pre-existing impairment (work-related or not). If both conditions are not met, the employee does not recover for the pre-existing disability, only for the new injury. Md. Lab. & Empl. Code Ann. § 9-802.

What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?

The Commission retains power and jurisdiction to readjust compensation for aggravation, diminution or termination of disability. This power can only be exercised if an application for re-opening is made within five years after the latter of the date of the accident, the date of disablement or the last compensation payment. Md. Lab. & Empl. Code Ann. § 9-736. Payment of medical benefits does not constitute "compensation" for purposes of the five-year limitations period. *Holy Cross Hosp. v. Nichols*, 290 Md. 149, 428 A.2d 447 (1981).

What situation would place responsibility on the employer to pay an employee's attorney's fees?

The Commission sets the fees for employees' attorneys at a percentage of the award. Md. Lab. & Empl. Code Ann. § 9-731; COMAR 14.09.04.03. The Commission has discretion to award an attorney's fee in addition to the employee's award if the lawyer's time was necessitated by frivolous issues. Md. Lab. & Empl. Code Ann. § 9-734.

EXCLUSIVITY/TORT IMMUNITY

Is the compensation remedy exclusive?

A. Scope of immunity.

The liability of an employer/insurer under workers' compensation law is generally exclusive. Md. Lab. & Empl. Code Ann. § 9-509.

B. Exceptions (intentional acts, contractual waiver, "dual capacity," etc.).

The exceptions to the exclusivity of the workers' compensation remedy are: (1) a deliberate intentional act by the employer, *Johnson v. Mountaire Farms of Delmarva, Inc.*, 305 Md. 246, 503 A.2d 708 (1986); (2) an uninsured employer, *Cox v. Sandler's Inc.*, 209 Md. 193, 120 A.2d 674 (1956); or (3) an employer who expressly waives immunity, *American Radiator v. Mark Engineering Co.*, 230 Md. 584, 187 A.2d 864 (1963). Md. Lab. & Empl. Code Ann. § 9-509.

Are there any penalties against the employer for unsafe working conditions?

If a covered employee is injured or killed as a result of the deliberate intent of the employer, the employee may choose to proceed in tort rather than under workers' compensation. Md. Lab. & Empl. Code Ann. § 9-509(d). However, deliberately placing an employee in a dangerous position, and willfully violating government regulations, does not constitute such a deliberate intent. *Johnson v. Mountaire Farms of Delmarva, Inc.*, 305 Md. 246, 503 A.2d 708 (1986). Once one remedy is chosen and pursued, the

employee may not thereafter pursue the other remedy. *Wagner v. Allied Chem. Corp.*, 623 F.Supp. 1412 (D. Md. 1985).

What is the penalty, if any, for an injured minor?

A minor (under 18) who is employed without a work permit may, in the Commission's discretion, be awarded double compensation. The employer alone, not the insurer, must pay such additional benefits. Md. Lab. & Empl. Code Ann. § 9-606.

What is the potential exposure for "bad faith" or claims handling?

An employer/insurer may be liable in tort for emotional distress claims if its conduct is intentional, reckless, extreme and outrageous. See *Gallagher v. Bituminous Fire & Marine Ins. Co.*, 303 Md. 201, 492 A.2d 1280 (1985); *Young v Hartford Accident and Indem. Co.*, 303 Md. 182, 492 A.2d 1270 (1985).

What is the exposure for terminating an employee who has been injured?

An employer may not discharge a covered employee solely because the employee has filed a claim. Md. Lab. & Empl. Code Ann. § 9-1105; *Ewing v. Koppers Co.*, 312 Md. 45, 537 A.2d 1173 (1988). However, an employer may fill a position based on economic necessity when an employee has not returned to work. *Kern v. South Baltimore General Hosp.*, 66 Md. App. 441, 504 A.2d 1154 (1986).

THIRD PARTY ACTIONS

Can third parties be sued by the employee?

Yes. Md. Lab. & Empl. Code Ann. § 9-902.

Can co-employees be sued for work-related injuries?

Yes, co-employees are generally amenable to suit individually. *Hutzell v. Boyer*, 252 Md. 227, 249 A.2d 449 (1969). In addition, under certain limited circumstances the co-employee may "stand in the shoes" of the employer, making the employer vicariously liable, if the co-employee was the "alter ego" of the employer at the time of the occurrence. *Schatz v. York Steak House Sys.*, 51 Md. App. 494, 444 A.2d 1045 (1982). But see *Federated Dep't Stores, Inc. v. Le*, 324 Md. 71, 595 A.2d 1067 (1991). Note, however, a supervisory co-employee who performs the non-delegable duty of the employer does not thereby assume a personal duty toward his or her fellow employee with respect to negligence actions. *Athas v. Hill*, 300 Md. 133, 476 A.2d 710 (1984).

Is subrogation available?

Yes. The employer/insurer has the exclusive right to bring suit against a third party within two months after the Commission makes an award. Once the two-month period has elapsed, the employee and the employer/insurer each have the right to sue the third party.

The employer/insurer have a lien against any third-party recovery in the amount of benefits paid. The lien must be repaid "off the top" of any third-party recovery, less a prorated share of costs and attorneys' fees. In addition, the employer/insurer are entitled to a credit, for any excess above the lien recovered by the employee, against further compensation which the employee may become entitled to. Md. Lab. & Empl. Code Ann. § 9-901 through § 9-903.

MEDICALS

Is there a time limit for medical bills to be paid, and are penalties available for late payment?

Medical bills must be paid "promptly." Md. Lab. & Empl. Code Ann. § 9-660. The Commission may assess a fine not to exceed 20% of any medical fee not paid promptly. COMAR 14.09.06.02.

Are there limitations for a medical provider to submit a bill for payment?

Medical providers seeking payment for treatment related to an employee's work-related injury must submit to the employer or the employer's insurer a bill for such services within one year from the later of: (1) the date of the medical treatment or service; (2) the date the employee's workers' compensation claim was accepted by the employer or the employer's insurer; or (3) the date the employee's workers' compensation claim was found to be compensable by the Commission. Md. Lab. & Empl. Code Ann. § 9-660(d).

If a bill is not submitted timely, the employer or the employer's insurer may not be required to pay unless the provider files a timely application for payment with the Commission *and* the Commission finds good cause to excuse the untimely submission. An application for payment must be submitted within three years from the later of: (1) the date of the medical treatment or service; (2) the date the employee's workers' compensation claim was accepted by the employer or the employer's insurer; or (3) the date the employee's workers' compensation claim was found to be compensable by the Commission. *Id.*

What, if any, mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level?

The parties and their agents and attorneys are required to promptly provide to each other copies of all relevant medical information, including reports, evaluations, bills, etc., throughout the pendency of the claim. COMAR 14.09.03.07(A). In addition, upon request by the Commission or any party, a health care provider is required to provide copies of routine medical records. COMAR 14.09.08.07(D).

The fees for preparation and copying of such documents are limited to .76 cents per page for copying and mailing, plus a maximum fee of \$22.88 for preparation and retrieval, and actual costs for postage and handling. Md. Health-Gen. Code Ann. § 4-304. Additionally,

if a health care provider knowingly refuses to disclose a medical record within a reasonable time after a person in interest requests the disclosure, the health care provider is liable for actual damages. Md. Health-Gen. Code Ann. § 4-309.

There are also certain procedures which relate to medical records at the permanent disability stage of the claim. Before filing an issues form raising permanent disability, the filing party “shall” have already obtained a written evaluation of permanent impairment. COMAR 14.09.09.02(B).

The Code of Maryland Regulations, Title 14, § 09.03.07(B) provides that “[u]nless the Commission orders otherwise for good cause shown, a party shall provide to any other party, on written request, a medical authorization or release.” Under COMAR 14.09.03.07(C), a party seeking the medical authorization may file a Motion to Compel Medical Authorization form upon the failure of another party to provide such medical authorization.

What is the rule on choice of physician?

In general, the employee selects treating physicians. The employer cannot control selection except for choosing the physician who performs an independent medical examination.

What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?

Medical benefits are payable so long as they are reasonable, necessary, and causally related to the accidental injury or occupational disease. The Commission has discretion to determine whether the employer is liable for treatment. Md. Lab. & Empl. Code Ann. § 9-660; Queen v. Agger, 287 Md. 342, 412 A.2d 733 (1980).

Which prosthetic devices are covered, and for how long?

If a compensable injury causes the need for a prosthetic device, the device is reimbursable so long as it is required by the nature of the injury. Md. Lab. & Empl. Code Ann. § 9-660. An employer/insurer must also repair or replace a prosthetic device damaged by accident during the course of employment. Md. Lab. & Empl. Code Ann. § 9-661.

Are vehicle and/or home modifications covered as medical expenses?

The Commission may order modifications to an employee's home (not vehicles) for medical necessity, but not simply for quality of life. *R. & T. Construction Co. v. Judge*, 323 Md. 514, 594 A.2d 99 (1991).

Is there a medical fee guide or schedule, or other provisions for cost containment?

Yes. The "Official Maryland Workers' Compensation Medical Fee Guide" (1995) issued by the Workers' Compensation Commission, regulates medical and surgical fees. The "fee

guide" also applies to fees charged by out-of-state providers on a Maryland claim. Providers may not seek further reimbursement directly from the employee. Md. Lab. & Empl. Code Ann. § 9-663; COMAR 14.09.08.02. The fee guide has been held to be constitutional. *Falik v. Prince George's Hosp. & Medical Center*, 322 Md. 409, 588 A.2d 324 (1991).

What, if any, provisions or requirements are there for "managed care"?

None in Maryland.

PRACTICE/PROCEDURE

What is the procedure for contesting all or part of a claim?

When a claim is filed, the Commission notifies the employer/insurer by a copy of the claim form and a "C-40" form. The employer/insurer may contest any and all parts of the claim by filing "issues" prior to the "consideration date" established by the Commission and indicated on the C-40. Md. Lab & Empl. Code Ann. § 9-713.

What is the method of claim adjudication?

A. Administrative level.

Any disputed issues in claims are initially heard before a Commissioner of the Maryland Workers' Compensation Commission. The hearings are relatively informal, and there is no discovery. At least three business days before a hearing, the parties must exchange exhibits that were not previously produced. Live testimony is taken from the employee and lay witnesses, but expert evidence is introduced through written reports unless special provision is made (rarely done) for live expert testimony.

B. Trial court.

A party aggrieved by a decision of the Workers' Compensation Commission may appeal as of right to the circuit court in the venue where the claimant resides, the employer has its principal place of business, or where the injury occurred. Md. Lab. & Empl. Code Ann. §§ 9-737 through 9-740. Such an appeal must be filed within thirty days of the Commission's decision. Trial in the circuit court is essentially de novo, with full discovery and the right to a jury trial, although there is a presumption in favor of the Commission's decision. Md. Lab. & Empl. Code Ann. § 9-745.

As a general rule, an appeal does not "stay" an award, and the compensation ordered must be paid while employer/insurer pursue an appeal. Md. Lab. & Empl. Code Ann. § 9-741. However, an appeal does operate as a "stay" with respect to medical bills incurred prior to the date of an appealed order. *University of Md. Medical Sys. Corp. v. Erie Ins. Exch.*, 89 Md. App. 204, 597 A.2d 1036 (1991). In

addition, any attorneys' fees ordered by the Commission may be held in escrow during the pendency of the appeal. COMAR 14.09.04.02(A)(7). If an award is reversed on appeal, the employer/insurer cannot recover from the employee amounts already paid, absent fraud by the employee, except as noted below. St. Paul & Marine Ins. Co. v. Treadwell, 263 Md. 430, 283 A.2d 601 (1971).

The Workers' Compensation Commission retains jurisdiction over a request for temporary total disability benefits while a claim is pending on appeal, if the order which is the subject of the pending appeal granted temporary total disability benefits which were subsequently terminated by the insurer, prior to resolution of the pending appeal. If the Commission finds that further or continuing temporary total disability benefits are warranted, the Commission can order reinstatement of temporary total disability benefits. However, if the Commission's order awarding reinstatement of temporary total disability benefits is reversed or modified on appeal, the insurer is entitled to an offset or credit in the amount of the temporary total disability awarded and paid in accordance with the supplemental order.

C. Appellate.

A party aggrieved by the decision of a circuit court may appeal as of right to the Maryland Court of Special Appeals, with the same scope of review as in common law actions. Md. Lab. & Empl. Code Ann. § 9-750. A party aggrieved by a decision of the Court of Special Appeals must seek a writ of certiorari to the Court of Appeals of Maryland, the state's highest court.

What are the requirements for stipulations or settlements?

Any settlement of a workers' compensation claim must be approved by the Commission. Md. Lab. & Empl. Code Ann. § 9-722. The Commission will not approve a settlement agreement without a hearing, unless the agreement is accompanied by the employee's executed affidavit, on the designated Commission form, waiving such a hearing. COMAR 14.09.10.02 (F). In practice, such affidavits are generally provided and hearings are only held when the Commission initially disapproves the proposed settlement.

A stipulated award for permanent disability must also be approved by the Commission. The proposed stipulation must be submitted on the form provided by the Commission, and must include specified information. Additional documentation is required if the employee is not represented by an attorney. COMAR 14.09.09.04.

Are full and final settlements with closed medicals available?

Yes.

Must stipulations and/or settlements be approved by the state administrative body?

Yes.

RISK FINANCE FOR WORKERS' COMPENSATION

What insurance is required; and what is available (e.g. private carriers, state fund, assigned risk pool, etc.)?

The employer must be insured for workers' compensation or qualify as a self-insurer. Md. Lab. & Empl. Code Ann. § 9-402. The insurers available are acceptable private insurers or the state Injured Workers' Insurance Fund. There is no assigned risk pool in Maryland.

What are the provisions/requirements for self-insurance?

A. For individual entities.

Individual employers may self-insure with Commission approval. Md. Lab. & Empl. Code Ann. § 9-403. The applicant must: (1) establish financial ability to pay claims as they become due; (2) post a required security (can be a letter of credit); (3) purchase excess insurance; (4) maintain an office in Maryland to handle claims; and (5) provide periodic reports to the Commission. Md. Lab. & Empl. Code Ann. § 9-405. All insurers are required to provide a toll free number to receive calls during business hours.

B. For groups or "pools" of private entities.

Group self-insurance is permitted. Md. Lab. & Empl. Code Ann. § 9-402(a)(3); Md. Insurance Cod Ann. § 25-301 *et seq.* The members of such a group must obtain a certificate of authority from the insurance commissioner. COMAR 31.08.09.08. To participate in a self-insurance group of private employers, the application must meet a variety of requirements and include the group's articles of association, if any; a copy of the group's bylaws; a copy of the agreement between the group and each member securing the payment of workers' compensation benefits; and additional details. COMAR 31.08.09.08 (C). Members of the group must agree to be jointly and severally liable for claims. Id.

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