Government of the District of Columbia
Office of the Chief Financial Officer

Fitzroy Lee
Interim Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Fitzroy Lee
Interim Chief Financial Officer

DATE: March 31, 2021

SUBJECT: Fiscal Impact Statement – Permanent Disability Restoration and Expansion Amendment Act of 2021

REFERENCE: Draft Bill, provided to the Office of Revenue Analysis on March 11, 2021

Conclusion

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

Background

Under the District’s public sector workers’ compensation program for government employees, a permanent workplace disability claim by a District government employee is limited to a statutory schedule of impairments, which does not cover the entire body. The bill expands compensable permanent impairments to cover the entire body, based on the impairment rating system defined in the American Medical Association’s Guide to Permanent Impairment (“AMA Guide”). The AMA Guide is used by 40 other states and the federal government for defining and rating impairments. Claimants receiving compensation for a temporary injury will be eligible for a permanent award once the claimant has reached maximum medical improvement.

1 D.C. Official Code § 1-623.07.
3 Maximum medical improvement is the point at which a doctor indicates an injury cannot be further improved with treatment.
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The amount of basic compensation for a permanent workplace injury is currently based upon the claimant’s salary. This means two claimants can receive a different benefit award for the same injury. The bill standardizes how much is paid to employees by tying the scheduled award amount to the salary of a career service employee at a Grade 11, Step 1. Length of awards or amounts of any lump-sums will still vary depending on the type of injury.

The bill also establishes an indefinite permanent disability benefit for claimants with a whole-person impairment covering greater than 50 percent of the body. This benefit will be paid after the scheduled award amount, and compensation will be based on the degree of impairment and the employee’s salary.

Lastly, the bill authorizes reasonable attorney fees to be paid in the successful challenge of any workplace injury action or decision issued by the Chief Risk Officer. The fee may not exceed 20 percent of additional benefit secured. Currently, attorney fees are only awarded for claims disputes heard before an administrative law judge.5

Financial Plan Impact

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

The bill’s changes will apply only to permanent disability compensation decisions made following the effective date of the bill. Expanding the types of permanent disability injuries could increase the number of eligible permanent claims, but such injured persons currently receive temporary disability benefits so the change will not increase benefit expenditures in the Employee’s Compensation Fund6 (“Fund”). The Office of Risk Management (ORM) reviewed claims back through fiscal year 2019 and estimates that if the new standards were already in effect, there may have been an additional one or two eligible permanent claims. Those individuals are currently being paid temporary disability benefits from the Fund.

Under the bill, existing temporary impairment claims may be evaluated for permanent impairment status if workers have reached the bill’s standards of maximum medical improvement. If a claimant meets the standards for permanent disability, a permanent award will be issued, and benefit payments will continue. If the claimant has reached maximum medical improvement but does not meet the new standards for permanent disability, benefits payments will cease, reducing fund expenditures. ORM expects the clarity provided by the new definitions will reduce fund expenditures over time, however there is insufficient data to determine specific savings at this time.

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4 For employees hired before January 1, 1980, compensation is still based on a claimant’s salary, provided the amount paid is equivalent to a Career Service Grade 11, Step 1, and no more than 75 percent of a GS-15, Step 10.

5 D.C. Official Code § 1-623.07.

6 Agency BG0 Employee’s Compensation Fund is the budget for administering the District’s Public Sector Workers’ Compensation program for government employees. https://cfo.dc.gov/node/1462551
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Because the bill ties basic compensation for a permanent award to a Grade 11, Step 1 career service salary, claimants with a salary below that level will receive a higher benefit than they would have under current law, and claimants with a salary above that level will receive a lower benefit amount than they would have. This change applies to future claims only, so we cannot calculate the true net effect of this change on benefit expenditures, but the effect is expected to be small. If the change were to be applied to existing permanent disability claims (it will not be under the bill) approximately 78 percent would see an increased benefit, and 22 percent would see a decreased benefit, and costs would increase $220,000 per year, or about nine percent of total permanent benefits. This cost can be absorbed within the current budget.

Lastly, the bill authorizes attorney fees to be reimbursed when an action by the Chief Risk Officer (CRO) is successfully challenged. Fees cannot exceed 20 percent of a successfully requested benefit adjustment. CRO administrative actions generally do not affect benefit amounts, but when they do, the amounts tend to be small. Over the last two years, there were six CRO actions resulting in benefit increases totaling $159,000. Attorneys were not involved in all those actions, but if they had been, a maximum of $31,000 could have been reimbursed under the bill’s proposed change. Assuming that same level of fees is reimbursed in the future, this cost can be absorbed within the current budget.

In summary, the bill will change future claim award eligibility and the value of those awards, but the overall effect on benefit expenditures will be small. If current claim levels and types continue, the bill could increase benefit expenditures by approximately $100,000 to $300,000. This increase, should it occur, is small enough to be absorbed within the current budget. It is also possible expenditures could decrease if current temporary claimants do not meet the permanent injury standards set out in the bill. The Fund has ended the last two fiscal years with a positive balance ($2.3 million in fiscal year 2019 and $6.6 million in fiscal year 2020) and can accommodate the possible increase in expenses.