


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



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

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

**FROM:** Natwar M. Gandhi  
Chief Financial Officer 

**DATE:** December 11, 2012

**SUBJECT:** Revised Fiscal Impact Statement – “Protecting Injured Government Workers Reform Act of 2012”

**REFERENCE:** Bill 19-885

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*This is a revised fiscal impact statement to reflect changes made to the bill at introduction. It replaces the fiscal impact statement issued on the draft legislation on May 29, 2012.*

**Conclusion**

Funds are not sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the proposed bill. The bill would cost an estimated \$802,000 in FY 2013 and \$2.74 million over the four-year financial plan period.

**Background**

The bill would make five changes to the District’s Public Sector Workers’ Compensation Program.<sup>1</sup>

First, it would repeal the prohibition on claims for mental stress, emotional conditions, or emotional diseases. Such claims were prohibited in 2010 as cost saving measures.<sup>2</sup>

Second, it would require that in determining the medical or compensatory benefit amount, the District must attach “great weight” to the opinions of the treating physician, and thus base its

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<sup>1</sup> The bill would amend Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, Public Sector Workers’ Compensation, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-623.01 *et seq.*).

<sup>2</sup> The statute was amended in the “Fiscal Year 2011 Budget Support Act of 2010,” effective September 24, 2010 (D.C. Law 18-223; 57 DCMR 6242).

calculations on the opinions of the treating physician (as opposed to those of a medical examiner).<sup>3</sup> As with the first change, the "great weight" provision was eliminated in 2010.<sup>4</sup>

Third, if the District makes a determination to suspend, reduce, or terminate a beneficiary's compensation, the District would have to continue to pay compensation at the previous rate until the beneficiary is no longer eligible to request a hearing on the change or until a hearing is held and an Administrative Law Judge (ALJ) upholds the District's decision. Under current law, the payments are terminated immediately upon the District's determination and the District retroactively pays a beneficiary if the ALJ overturns the District's determination. Under the provisions of the bill, the District would request a refund payment from the beneficiary if the ALJ upholds the determination.

Fourth, the bill changes the rules for the 500-week limit to temporary disability benefits. Under current law, benefits for temporarily disabled are terminated at the end of 500 weeks. Under the bill, at the 500-week deadline, an ALJ would rule on whether the beneficiary was still injured, and if so, whether the injury should be considered temporary or permanent. If the beneficiary were determined to be still temporarily injured, benefits would continue, and a hearing would be held annually to monitor the beneficiary's health status.<sup>5</sup>

Finally, the bill sets the penalties the District must pay to a beneficiary if it delays or fails to deliver payments to a beneficiary as required by a directive from the ALJ regarding compensation or payment to a health provider for medical services. Furthermore, in such a case, the beneficiary would be entitled to file with the Superior Court of the District of Columbia a lien against the Public Sector Workers' Compensation Fund, the District's General Fund, or any other District fund or property as a means of claiming the lost compensation.

### **Financial Plan Impact**

Funds are not sufficient in the FY 2012 budget and the proposed FY 2013 through FY 2016 budget and financial plan to implement the proposed bill.

The table below outlines the estimated cost of implementing the bill beginning in FY 2013. The estimated cost of including emotional damages among eligible claims is based on the average annual payout to beneficiaries claiming emotional conditions or mental stress when the D.C. Code allowed such claims prior to 2010. The "great weight" language estimate is the average annual payout to beneficiaries whose claims would have been accepted had great weight been given to the medical opinions of their treating doctors. The estimate for continued compensation following the suspension or termination of benefits until an ALJ hearing can be held is based on the average amount of compensation a beneficiary would receive during the approximately six-month period of the hearing process. Assuming the bill takes effect by March 31, 2012, the costs in FY 2013

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<sup>3</sup> The bill would add to the section on the determination of benefits the statement that "in all medical opinions used under this section, the diagnosis or medical opinion of the employee's treating physician shall be accorded great weight over other opinions, absent compelling reasons to the contrary."

<sup>4</sup> See footnote 2 above.

<sup>5</sup> The 500-week clock did not start for current long-term beneficiaries until FY 2011. Thus, the costs of implementing this change will not begin until these beneficiaries begin to time out in approximately 10 years, well beyond the 4-year financial plan period. It is difficult to determine what the costs to the District could be at that time. For context, as of August 2009, there were 186 injured workers who had been claiming disability compensation for 20 years or longer. On average, these beneficiaries were paid approximately \$29,000 per year.

represent payouts to beneficiaries in the last six months of FY 2013 that under current law would not have to be paid until after the hearing in FY 2014. The costs in the following years represent the collections loss on benefits paid out during the six-month period before the ALJ hearing to beneficiaries who have to pay the District back after the hearing but fail to do so.<sup>6</sup>

The fourth and fifth changes in the bill do not have a fiscal impact.

| <b>Estimated Fiscal Impact of Protecting Injured Government Workers Reform Act of 2012 --<br/>FY 2013 - FY 2016</b> |                  |                  |                  |                  |                     |
|---|------------------|------------------|------------------|------------------|---------------------|
|   | <b>FY 2013</b>   | <b>FY 2014</b>   | <b>FY 2015</b>   | <b>FY 2016</b>   | <b>4 Year Total</b> |
| Reinstatement of emotional damages  | \$52,354         | \$52,354         | \$52,354         | \$52,354         | <b>\$209,415</b>    |
| Reinstatement of "great weight" language  | \$358,389        | \$358,389        | \$358,389        | \$358,389        | <b>\$1,433,556</b>  |
| Continue payments through ALJ-level appeals*  | \$391,019        | \$234,611        | \$234,611        | \$234,611        | <b>\$1,094,852</b>  |
| <b>Total</b>  | <b>\$801,761</b> | <b>\$645,354</b> | <b>\$645,354</b> | <b>\$645,354</b> | <b>\$2,737,823</b>  |

**Table Notes**

\* First year costs reflect the six-month forward shifting of costs required to implement the bill. Costs in subsequent years are due to collections losses.

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<sup>6</sup> Based on data from the Office of Risk Management from FY 2011, we assume that 75 percent of ALJ cases are either won by the District or withdrawn by the complainant. We estimate the collections loss on recaptured funds at 40 percent.