



South Dakota Legislative Research Council

Issue Memorandum 98-24

Subsequent Injury Fund

Introduction

The subsequent injury fund is used to help pay workers' compensation expenses for employers that have hired an individual with a disability if that individual suffers a second disabling injury. This issue memorandum will provide some historical background on the subsequent injury fund, discuss the present situation, review claims data for the fund, and highlight some recent legislation.

Historical Background

The subsequent injury fund was established in Senate Bill (SB) 7 during the 1947 Legislative Session. The initial purpose of the subsequent injury fund, as reflected in the title of SB 7, was to encourage employment of veterans with disabilities and other individuals with disabilities.

Under the 1947 law, an employee with a previous disability who incurs a second disabling injury would be eligible for workers' compensation based on the sum of the previous and second injuries. However, the employer would only be responsible for compensating the employee for the portion of the disability related to the second injury.

The compensation that the employee would receive for the portion of the injury not related to the second injury would come from the subsequent injury fund.

Revenue for the subsequent injury fund comes from an assessment on insurance companies or employers if self-insured. At

the time the fund was established, the assessment rate was one-half of one percent of all workers' compensation paid the previous year. The assessment would cease when the balance in the fund exceeded ten thousand dollars and would begin if the balance fell below five thousand dollars. Also, if an employee dies and there is no one entitled to the workers' compensation, the insurance company pays \$500 to the fund.

Present Situation

Since the 1947 law was enacted, there have been changes to the rate of assessment and the amount of compensation that the fund will reimburse. However, the subsequent injury fund's purpose has not changed. It is still there to encourage employers to hire individuals with disabilities without having the employer pay all of the expenses if that employee suffers another disabling injury.

The current statutes for the subsequent injury fund are found in chapter 62-4 of the South Dakota Codified Laws. Under today's law, an employee with a previous disability who incurs a second disabling injury would be eligible for workers' compensation based on the sum of the two injuries. The employer would pay the injured employee's medical and hospital expenses and workers' compensation. The subsequent injury fund reimburses the employer for two-thirds of all expenses.

Under current law, the assessment on insurance companies (or employers if self-insured) is four percent of workers'

compensation expenses paid the previous year. The assessment is made any time the fund falls below two hundred thousand dollars. According to the South Dakota Division of Insurance, it has been necessary to make the assessment on the following dates: August 1994, July 1995, July 1996, March 1997, December 1997, and July 1998. The \$500 fee for no dependent death cases remains the same as it was in 1947.

Claims

Table 1 shows historical claims data for the subsequent injury fund.

	Dollars Paid	New Claims	Claims Paid
FY 91	\$51,834	*	*
FY 92	\$686,882	*	*
FY 93	\$1,484,603	*	*
FY 94	\$344,008	21	6
FY 95	\$3,514,908	30	49
FY 96	\$3,140,916	51	51
FY 97	\$3,607,767	59	51
FY 98	\$4,526,323	73	79

* No data available.

Other States

It is difficult to compare South Dakota’s subsequent injury fund with funds in other states because there is much diversity among the programs in the other states. Revenue sources for subsequent injury funds in other states include percentage assessments on the previous workers’ compensation expenses (similar to South Dakota), a tax on insurance premiums, fees on insurance companies in a death case where there is no dependent named (up to \$25,000 per case), and various fines and penalties. How much an employer is required to pay an injured employee and how much the state’s subsequent injury fund is required to pay also vary among the states.

There are three states that have no subsequent injury fund – Alabama, Maine, and Wyoming. Some states single out certain companies and require them to provide a larger portion of revenue for the fund (i.e., coal companies in Kentucky).

Recent Legislation

During the 1997 Legislative Session, House Bill (HB) 1050 was introduced and would have eliminated self-insured employers from the subsequent injury fund. This bill would have addressed the issue of a large amount of claims going to self-insured employers. Opponents of HB 1050 thought it unfair to eliminate self-insured employers from the subsequent injury fund; therefore, the bill did not pass.

During the 1998 Legislative Session, SB 207 was introduced to repeal the subsequent injury fund. Instead of eliminating just the self-insured employers, an attempt was made to eliminate the subsequent injury fund altogether. The bill was extensively amended to retain the subsequent injury fund and exclude self-insured employers from participating in the subsequent injury fund. The bill went to a conference committee where it failed because the conference committee members could not reach an agreement.

Supporters of the subsequent injury fund believe the fund still serves its initial purpose (encouraging employers to hire individuals with disabilities). However, opponents believe a few employers receive a large share of the benefits at the expense of everyone else participating in the fund. Proposals to eliminate self-insured employers from the fund and to repeal the fund have not passed. It is likely that legislators will have another opportunity to debate the subsequent injury fund during the 1999 Legislative Session.

Summary

Today the purpose of the subsequent injury fund remains the same as it did in 1947 when the fund began -- encourage employers to hire individuals with disabilities. The claims for reimbursement from the subsequent injury fund have

increased in the last few years and assessments have been more frequent. Recent attempts to revise and repeal the fund have been unsuccessful. Legislators will likely debate the subsequent injury fund again during the 1999 Legislative Session.

This issue memorandum was written by David Becker, Senior Fiscal Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
