Councilmember Mary M. Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to amend the District of Columbia Workers' Compensation Act of 1979 to provide that the payment or award of compensation under the workers' compensation law of any other state shall not bar a claim for compensation under the District's workers' compensation law for the same injury or death; provided, that any such award under the District's workers' compensation law shall be reduced by the amount of compensation received or awarded under the workers' compensation law of any other state.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Parity in Workers' Compensation Recovery Emergency Declaration Resolution of 2022".

Sec. 2. (a) Currently, under D.C. Official Code § 32–1503(a-1), a worker cannot receive any workers' compensation "and at any time receive compensation under the workers' compensation law of any other state for the same injury or death." In practice, this provision is strictly interpreted by the courts to bar injured workers from bringing otherwise valid claims in the District if they have received any compensation under the law of another state, no matter whether the compensation provided in that other state was less than the worker would be entitled to in the District or whether the worker knew that receiving the compensation would waive her right to bring a claim in the District.

(b) This legislative scheme effectively allows employers and their insurers to choose which state's law will apply to workers' compensation claims brought against them. For

example, where an employer or its insurance company files the first report of injury in another state and writes the injured employee a check for any amount, that action effectively bars the employee from seeking compensation in the District. An employer may even simply tell the worker that a payment is being made in accordance with the law of another state. Although an injured worker could maintain the ability to bring a claim in the District by rejecting payment, injured workers are typically not in a position to do so when such payments are needed to cover medical expenses or other bills—and often do not know that accepting payment will bar them from any recovery in the District. Courts interpret subsection D.C. Official Code § 32–1503(a-1) broadly and conduct a case-by-case analysis to determine whether a claimant has received compensation under the law of another state; that analysis often results in claimants being denied access to relief in the District.

(c) This is a problem because workers' compensation laws in the District are generally more favorable to injured workers than those in neighboring Maryland and Virginia. Most notably, the District allows injured workers to "stack" their wages for purposes of calculating benefits, meaning that an injured worker who works more than one job is entitled to benefits based on lost wages from both jobs. In Maryland and Virginia, injured workers generally cannot stack their wages. Further, in calculating compensation owed to an injured worker, Maryland only considers the wages earned during the 14 weeks immediately preceding the work injury, while the District considers wages earned during the 26 preceding weeks. Unlike the District, Maryland and Virginia do not bar recovery if compensation has been received under the laws of another state.

(d) Since the workers' compensation laws in neighboring states are more favorable to employers and many injured workers have an urgent need to expeditiously access compensation

after an injury, local workers' compensation attorneys in the District have seen a number of employers and their insurance companies use the aforementioned tactics to prevent workers from bringing their valid claim for workers' compensation in the District.

(e) This emergency legislation is necessary to remedy this situation by removing the bar on recovering workers' compensation in the District after receiving similar compensation under the laws of another state. This legislation is being moved on an emergency basis to ensure that injured workers—including those with a currently pending case—are not prevented from accessing full compensation afforded under District law due to first accepting compensation in another state. District law already prescribes that employees are entitled to compensation in these amounts; this legislation merely ensures that employers are not able to exploit a nuance in the law to pay out less to injured employees—who, it is again worth noting, are likely not as savvy about their right to additional benefits under District law and face financial pressure to accept their employer's first and lower offer of compensation.

(f) Of note, this legislation would not allow a worker to "double dip," or receive compensation twice for the same injury. Rather, the legislation would require the court to reduce damages by the amount of any compensation already paid to an injured worker in another state; in essence, the worker could now recover the difference in compensation between that provided in the other state and the amount available under District law.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Parity in Workers' Compensation Recovery Emergency Amendment Act of 2022 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.