

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: HB2228

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Guzman

3. Committee: Labor and Commerce

4. Title: Workers' compensation; injuries caused by repetitive and sustained physical stressors.

5. Summary: Provides that, for the purposes of the Virginia Workers' Compensation Act, "occupational disease" includes injuries from conditions resulting from repetitive and sustained physical stressors, including repetitive and sustained motions, exertions, posture stress, contact stresses, vibration, or noise. The bill provides that such injuries are covered under the Act. Such coverage does not require that the injuries occurred over a particular period, provided that such a period can be reasonably identified and documented and further provided that the employment is shown to have primarily caused the injury, considering all causes.

6. Budget Amendment Necessary: Indeterminate – see Item 8.

7. Fiscal Impact Estimates: Indeterminate – see Item 8.

8. Fiscal Implications: The proposed legislation is expected to impact the Department of Human Resource Management, Attorney General and Department of Law, Virginia Workers' Compensation Commission, and all agencies covered by the state's workers' compensation program. The research organization that examined repetitive motion injuries for the repetitive motion study - [Expanding Coverage under the Virginia Workers' Compensation Act for Injuries Caused by Repetitive Motion](#), published in November 2020, states that occupational injuries from repetitive motion constitute a relatively small portion of claims across the country, and it is anticipated that Virginia would have a similar experience, although depending on how this change is implemented, Virginia may experience more claims and associated costs than anticipated.

Department of Human Resource Management

According to the Department of Human Resource Management (DHRM), the proposed legislation is expected to impact its Office of Workers' Compensation (OWC) program and the workers' compensation premium paid by state agencies for workers' compensation insurance coverage. In its review of OWC claims filed over the last 10 fiscal years, approximately 75% of repetitive motion injuries that were reported were denied. The average

cost for each accepted claim was approximately \$68,500. Using the average cost per claim, the OWC could have incurred an estimated \$63.0 million in reserves for repetitive motion injury claims alone over the past 10 years, if they were not denied due to the current workers' compensation statutes. The expected increase in repetitive motion injury claims would lead to an increase in the annual experience-based workers' compensation premium paid by state agencies. DHRM is unable to determine which agencies would be impacted the most by the proposed legislation; however, injuries due to repetitive and sustained physical stressors are very common, and the expected premium increase is expected to impact all state agencies covered by DHRM's workers' compensation program.

DHRM also anticipates additional claims staff in its OWC program would be needed to conduct investigations. The OWC program may need up to four lost time benefit coordinators to support the expected increase in accepted claims that will need to be investigated.

Attorney General and Department of Law

According to the Attorney General and Department of Law (OAG), this bill adds a class of claims - repetitive injury claims - that are currently not compensable. The report from which this bill is derived acknowledges that the bill will increase claims and increase litigation, at least until the case law resolves some of the issues. It is not possible to estimate how many additional claims will result from this bill, but it is anticipated several hundred new claims per year will be filed, with some subset of them litigated by the OAG. The four-attorney Workers' Compensation Unit handled 390 new matters last year, with an average of 100 cases per lawyer. An increase of 100 cases would require one additional lawyer in the Workers' Compensation Unit. The OAG may also need one additional support person if the number of additional claims increased to 150 or 200.

Virginia Workers' Compensation Commission

According to the Virginia Workers' Compensation Commission, the passage of HB 2228 will likely increase the number of workers' compensation claims filed in Virginia. The research organization that examined repetitive motion injuries for the repetitive motion study report - [Expanding Coverage under the Virginia Workers' Compensation Act for Injuries Caused by Repetitive Motion](#), states that based on insurance data, injuries from repetitive motion constitute approximately 2.1% of workers' compensation injuries and their respective share of overall claim costs is 2.5%. This is due to some injuries, such as carpal tunnel syndrome, typically involving more expensive treatments, including surgery. Although the number of workers' compensation claims is expected to increase, the Commission projects that HB 2228 will not have a significant financial impact upon the agency unless the claims become the liability of the Uninsured Employer's Fund, which provides compensation benefits awarded against any uninsured or self-insured employer.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Human Resource Management, Virginia Workers' Compensation Commission, Attorney General and Department of Law, and all state agencies.

- 10. Technical Amendment Necessary:** No.

11. Other Comments: None.