

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 693 (Delegates Barnes and Frush)
Economic Matters

Labor and Employment - Employment Standards and Conditions - Definition of Employer

This bill adds a standardized definition of “employer” to State laws that pertain to employment standards and conditions.

Fiscal Summary

State Effect: None. The bill does not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Potential meaningful, in some cases, as additional persons may be considered an employer and, thus, are liable under the bill for violations of State law related to employment standards and conditions.

Analysis

Bill Summary/Current Law: By establishing a general definition of what constitutes an employer, or to “employ,” the bill establishes a uniform definition of an employer in various sections of State law dealing with employment standards and conditions.

The definition established by the bill applies to various subtitles of law within the State’s Labor and Employment Article. Some of these sections are amended, as discussed below, to eliminate a duplicative definition. However, in other areas of the law, the general definition expands the applicability of the definition of “employer” under current law without amendments to the existing definition. For instance, the definition of

“employer” under the Maryland Wage Payment and Collection Law is expanded to include “a person who acts directly or indirectly in the interest of another employer with an employee.”

General Definition

Currently, the definition of “employ” in regards to laws related to the employment standards and conditions in the State means “to engage an individual to work” and includes “allowing an individual to work” and “instructing an individual to be present at a work site.” The bill does not alter this definition but adds a general definition of “employer” to mean “a person engaged in a business, industry, profession, trade, or other similar enterprise in the State who employs an individual in the State.” The definition also includes a person who “acts directly or indirectly in the interest of another employer with an employee.” This definition is drawn from existing definitions of “employer” used in some sections of statute, but the definitions vary.

Altering Established Definitions

In order to maintain consistency with the general definition established by the bill, the definitions of employer in various sections of State law pertaining to employment standards and conditions are amended. In particular, definitions of “employer” are altered in the following sections or related provisions of State law:

- “Equal Pay for Equal Work” (Labor and Employment § 3-301);
- Maryland Wage and Hour Law (Labor and Employment § 3-401);
- Maryland Wage Payment and Collection Law (Labor and Employment § 3-501);
- “Lie Detector Tests” (Labor and Employment § 3-702);
- “Leave” (Labor and Employment § 3-801); and
- “Leave for illness of immediate family” (Labor and Employment § 3-802).

These changes conform the general definition to the specific definitions established in various sections of law. Moreover, the bill repeals elements of the definition of employer in several sections that are redundant in light of the bill’s general definition.

The State’s laws pertaining to employment standards and conditions are interpreted to apply to the State and units of government only when the definition of an employer in a particular section specifies that such governmental employers are included in the definition. The bill’s general definition does not include units of government. Thus, the applicability of the definition of employer as it pertains to units of government is unchanged by the bill.

Small Business Effect: By adding the phrase “acts directly or indirectly in the interest of another employer with an employee” the definition of employer under the bill results in expanded liability for third parties who act on behalf of an employer. For some violations, a third party may be liable for an amount of damages that is three times higher than the wages owed to an employee. Thus, the impact on small businesses is meaningful to the extent that additional small businesses are exposed to greater legal liability under the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 444 (Senator Kelley, *et al.*) - Finance.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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