

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 640
Economic Matters

(Delegate Tarrant, *et al.*)

Labor and Employment - Intern Transportation Costs - Reimbursement by
Employers

This bill requires an employer, including a governmental unit, to reimburse an intern for transportation costs incurred by the intern because of the internship if the intern is not entitled to wages for the time spent in the internship.

Fiscal Summary

State Effect: The impact is small enough that it can be absorbed within any of the affected agencies' existing budget. Revenues are not affected.

Local Effect: The impact is small enough that it can be absorbed within a county's or municipality's existing budget. Revenues are not affected.

Small Business Effect: Potential minimal. To the extent that an unpaid intern works for a small business, the small business may incur minimal costs.

Analysis

Current Law: Employers are not required to reimburse unpaid interns for transportation costs that the intern incurs during the internship.

Background: The federal Fair Labor Standards Act (FLSA) requires that a worker be paid a minimum hourly wage and that overtime compensation be paid to employees who work more than 40 hours in a week. There are two ways in which an employee can be covered by FLSA: "enterprise coverage" and "individual coverage."

Enterprise Coverage: Employees who work for certain businesses or organizations are covered by FLSA. These enterprises, which must have at least two employees, are (1) those that have an annual dollar volume of sales or business done of at least \$500,000 or (2) hospitals, businesses that provide medical or nursing care, schools and preschools, and government agencies.

Individual Coverage: Even where there is no enterprise coverage, employees may be covered by FLSA if their work regularly involves them in interstate commerce. FLSA covers individual workers who are engaged in commerce or in the production of goods for commerce. Examples of employees who are involved in interstate commerce include those who (1) produce goods that will be sent out of state; (2) regularly make telephone calls to persons located in other states; (3) handle records of interstate transactions; (4) travel to other states for work; or (5) perform janitorial work where goods are produced for shipment to another state. Also, domestic service workers (*i.e.*, housekeepers, full-time baby sitters, and cooks) are normally covered by FLSA. However, many agricultural workers are not subject to FLSA minimum wage and overtime standards.

FLSA defines the term “employ” very broadly as including to “suffer or permit to work.” Covered and nonexempt individuals who are “suffered or permitted” to work must be compensated under federal law. Internships in the “for-profit” private sector are often viewed as employment, unless the following six criteria are met:

- the internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
- the internship experience is for the benefit of the intern;
- the intern does not displace regular employees but works under close supervision of existing staff;
- the employer that provides the training derives no immediate advantage from the activities of the intern and, on occasion, its operations may actually be impeded;
- the intern is not necessarily entitled to a job at the conclusion of the internship; and
- the employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of these factors are met, an employment relationship does not exist under FLSA, and minimum wage and overtime provisions do not apply to the intern.

State Expenditures: The Department of Budget and Management reports that requiring an employer to reimburse transportation costs for an intern may add to the administrative

burden of employing an unpaid intern and reduce the opportunities for such internships. Nevertheless, the Department of Legislative Services assumes that the costs incurred by the State are likely minimal and can be absorbed within existing budgets.

The bill has no enforcement provisions so State expenditures are not otherwise affected.

Local Expenditures: According to the Maryland Association of Counties, most of the counties surveyed pay their interns, so the effect is minimal on county expenditures. Thus, the Department of Legislative Services assumes any additional costs for counties (and likewise for municipalities) can be absorbed within existing budgets.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Municipal League; Maryland Department of Transportation; University System of Maryland; U.S. Department of Labor; Department of Legislative Services

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