

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1364 (Delegate McConkey)
Economic Matters

Maryland Wage and Hour Law - Exemptions - Employees Receiving Social Security Disability Insurance Benefits

This bill exempts an employee who is receiving federal Social Security disability insurance (SSDI) benefits from the Maryland Wage and Hour Law. The employee must notify the employee's employer, while not under duress, that the application of the Maryland Wage and Hour Law to the employee results in a loss of the federal SSDI benefits and that the employee elects to be subject only to the federal Fair Labor Standards Act (FLSA) of 1938.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: None. There is no impact since the State minimum wage is the same as the federal minimum wage. If the State decides to set the State minimum wage above the federal minimum wage, any increase in workload for the Department of Labor, Licensing, and Regulation could be carried out with the additional resources associated with enforcing the State minimum wage and there would be no additional effect on staffing costs. Likewise, any impact on contractual State employees would likely be negligible. No effect on revenues.

Local Effect: None. There is no impact since the State minimum wage is the same as the federal minimum wage. If the State decides to set the State minimum wage above the federal minimum wage, there would be no significant effect on local government expenditures.

Small Business Effect: None. However, if the State minimum wage is set above the federal minimum wage, the bill provides minimal potential relief to small businesses that employ workers who receive SSDI benefits and elect to be subject only to FLSA.

Analysis

Current Law: The Maryland Wage and Hour Law is the State complement to FLSA. It specifies that an employee must be paid the greater of the federal minimum wage, which is currently \$7.25 per hour, or \$6.15 per hour. The State and local governments are considered employers under the Wage and Hour Law.

The Maryland Wage and Hour Law, and minimum wage requirements, do not apply to certain categories of employees, including those defined as administrative, executive, or professional; certain seasonal employees; part-time employees younger than age 16 or older than age 61; salesmen and those who work on commission; an employer's immediate family; movie theater employees; employees training in a special education program in a public school; employees of an establishment that sells food and drink for on-premises consumption; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, seafood; and certain farm workers. Exceptions to the minimum wage requirement also exist for training wages and disabled employees of a sheltered workshop.

Fair Labor Standards Act

With some exceptions, similar to State law, 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.

Background: The Social Security Administration (SSA) administers the SSDI program, which provides benefits to disabled or blind persons who are “insured” by workers’ contributions to the Social Security Trust Fund. SSDI monthly benefits are based on the worker’s lifetime average earnings covered by Social Security. To receive SSDI benefits, an individual must be found to be unable to do substantial gainful activity (SGA) because of a medical condition, and the condition must have lasted, or be expected to last, at least one year or be expected to result in death.

Earnings guidelines are generally used to determine whether a person’s work activity is SGA. The earnings guidelines are adjusted annually based on increases in the national average wage index. If a person’s impairment is anything other than blindness, countable earnings averaging over \$1,070 a month for calendar 2014 generally demonstrate SGA. Thus, a person who is not blind can work approximately 147 hours a month (approximately 34 hours a week) earning an hourly rate of \$7.25 without losing SSDI benefits. If the person is blind, countable earnings averaging over \$1,800 a month for calendar 2014 generally demonstrate SGA. Thus, a blind person can work on a full-time basis earning \$7.25 without losing SSDI benefits.

According to SSA, approximately 3.6% of working age Marylanders received SSDI as of December 2012. As of December 2012, 126,323 workers in the State received average monthly SSDI benefits of \$1,166. Additionally, 675 workers had SSDI benefits withheld because their work earnings exceeded SGA criteria, and 821 workers had SSDI benefits terminated because of successfully returning to work.

Generally, if an individual is in a position to control when earnings are paid to him or her or the amount of compensation paid, SSA must evaluate the individual’s work activity under the tests of comparability and worth of work to determine if the work is SGA. The test of comparability determines if the work of the impaired individual is essentially the same in quality and quantity as work performed by unimpaired individuals in the same occupations. The test of worth of work is considering whether the employee’s work is clearly worth more than the earnings guideline amount.

A worker who reports his or her work activity and has a disabling impairment may continue to receive full SSDI benefits regardless of the worker’s earnings during a trial work period for nine service months (not necessarily consecutive) within a rolling

60-month period. After the trial work period ends, a person may receive a 36-month extended period of eligibility. The extended period of eligibility allows a person to receive SSDI benefits for all months that earnings or work activities are below the SGA level as long as the person continues to have a disabling impairment. The first time that an individual's earnings exceed SGA thresholds in the extended period of eligibility, the worker's disability may be deemed to have ceased. A person can receive SSDI benefits for the month that the disability ceased and the following two months.

Small Business Effect: There is no impact since the State minimum wage is the same as the federal minimum wage. If the State minimum wage is set above the federal minimum wage, the bill provides minimal potential relief to small businesses that employ workers who receive SSDI benefits and elect to be subject only to FLSA. Since only approximately 1% of workers receiving SSDI benefits had SSDI benefits withheld because of SGA or terminated because of successfully returning to work, it is assumed that not many workers are affected by the bill. Additionally, since workers must pass the tests of comparability and worth of work, the Department of Legislative Services assumes that not many workers will elect to be subject only to FLSA.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties; City of Bowie; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Disabilities; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; U.S. Social Security Administration; Department of Legislative Services

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