

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 968

(Delegate Olszewski, *et al.*)

Economic Matters

Labor and Employment - Maryland Earned Sick and Safe Leave Act

This bill requires an employer with more than nine employees to have a sick and safe leave policy under which an employee of the employer earns at least one hour of *paid* sick and safe leave, at the same rate and with the same benefits as the employee normally earns, for every 30 hours an employee works. An employer with nine or fewer employees, based on the average monthly number of employees during the preceding calendar year, must have a sick and safe leave policy that provides an employee with at least one hour of *unpaid* sick and safe leave for every 30 hours an employee works. An employer is not required to allow an employee to earn or carry over more than 56 hours of earned sick and safe leave in a calendar year or use more than 80 hours of earned sick and safe leave in a calendar year.

Earned sick and safe leave begins to accrue the later of October 1, 2014, or the date that an employee begins employment with the employer.

Fiscal Summary

State Effect: Expenditures increase (all funds) – potentially significantly – due to contractual employees receiving earned sick and safe leave. General fund expenditures increase by \$518,100 in FY 2015 due to additional staffing needs for the Department of Labor, Licensing, and Regulation (DLLR) to enforce the bill and conduct the required outreach program. Out-year expenditures reflect annualization, elimination of contractual staff and one-time start-up costs, and inflation. General fund revenues increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

| (in dollars) | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| GF Revenue | - | - | - | - | - |
| GF Expenditure | \$518,100 | \$613,800 | \$474,900 | \$438,300 | \$458,100 |
| GF/SF/FF Exp. | - | - | - | - | - |
| Net Effect | (\$518,100) | (\$613,800) | (\$474,900) | (\$438,300) | (\$458,100) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local government expenditures increase significantly for certain local jurisdictions to allow temporary or part-time employees to earn sick and safe leave. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Eligibility

An “employer” includes the State or local governments and a person who acts directly or indirectly in the interest of another employer with an employee. An “employee” does not include specified individuals who must contact the employer for work assignments, or employees who regularly work fewer than eight hours per week for an employer.

A “family member” includes:

- a biological child, an adopted child, a foster child, or a stepchild of the employee;
- a child for whom the employee has legal or physical custody or guardianship;
- a child for whom the employee is the primary caregiver;
- a biological parent, an adoptive parent, a foster parent, or a stepparent of the employee or the employee’s spouse;
- the legal guardian of the employee;
- an individual who served as the primary caregiver of the employee when the employee was a minor;
- the spouse of the employee;
- a grandparent of the employee;
- the spouse of a grandparent of the employee;
- a grandchild of the employee;
- a biological sibling, an adopted sibling, or a foster sibling of the employee; or
- the spouse of a biological sibling, a foster sibling, or an adopted sibling of the employee.

Use and Accrual of Leave

An employer must allow an employee to use earned sick and safe leave:

- to care for or treat the employee's mental or physical illness, injury, or condition;
- to obtain preventive medical care for the employee or employee's family member;
- to care for a family member with a mental or physical illness, injury, or condition;
- if the employer's place of business has closed by order of a public official due to a public health emergency;
- if the school of or child care provider for the employee's family member has closed by order of a public official due to a public health emergency;
- to care for a family member if a health official or health care provider has determined the family member's presence in the community would jeopardize the health of others because of the family member's exposure to a communicable disease; or
- for specified circumstances due to domestic violence, sexual assault, or stalking committed against the employee or the employee's family member.

An employer is not required to compensate an employee for unused earned sick and safe leave when the employee leaves the employer's employment. The bill does not prohibit a general paid leave policy that meets the minimum requirements of the bill or affect workers' compensation benefits, including those under a provision of a contract, a collective bargaining agreement, an employee benefit plan, or any other agreement. The bill does not affect any other law that meets the minimum requirements of the bill. The bill does not prevent an employer from establishing a policy that allows employees to voluntarily exchange assigned work hours.

An employer may grant an employee the full amount of earned sick and safe leave in the beginning of a calendar year rather than awarding the leave as it accrues during the calendar year, and an employer may allow an employee to use earned sick and safe leave before the amount needed accrues. An employee who is exempt from overtime wage requirements under the federal Fair Labor Standards Act is assumed to work 40 hours each work week unless the employee's normal work week is less than 40 hours. An employer is not required to allow an employee to use earned sick and safe leave during the first three months the employee is employed.

The bill includes additional processes and conditions, including notice and documentation requirements, under which an employee may use earned leave.

Requirements of the Commissioner of Labor and Industry

The commissioner may adopt implementing regulations and investigate violations upon receiving a written complaint by an employee. The commissioner must, to the extent practicable, keep the employee's identity confidential unless the employee waives confidentiality.

The commissioner must develop and implement a multilingual outreach program to inform individuals about the availability of earned sick and safe leave and distribute the materials to specified places and providers.

Notice to Employees

An employer must notify its employees that they are entitled to earned sick and safe leave by providing specified notice to employees. The Commissioner of Labor and Industry must create and make available a poster and a model notice that may be used by employers, which includes specified information on earned sick and safe leave and the rights of employees. If an employer fails to provide the proper notice to employees, an employer is subject to a civil penalty of up to \$125 for the first violation and \$250 for each subsequent violation.

Enforcement

An employer must keep relevant records for at least three years. Upon giving the employer notice and determining a mutually agreeable time for the inspection, the commissioner may inspect an employer's records regarding earned sick and safe leave.

It is presumed that an employer has violated the earned sick and safe leave provisions if there is an allegation that the employer has failed to accurately accrue the amount of earned sick and safe leave available to an employee, and the employer fails to keep records or allow the commissioner to inspect records. An employer may rebut the presumption of a violation by presenting clear and convincing evidence proving otherwise.

When the commissioner has determined that a provision of the bill has been violated, the commissioner may (1) try to resolve any issue informally by mediation; (2) with the employee's written consent, ask the Attorney General to bring an action on behalf of the employee; and (3) bring an action on behalf of an employee. An employee may bring a civil action against the employer for a violation of the bill, regardless of whether or not the employee first filed a complaint with the commissioner. An action must be filed within three years after the occurrence of the act on which the action is based.

If the court finds that an employer violated the earned sick and safe leave provisions, the court may award the employee the full monetary value of any unpaid earned sick and safe leave, economic damages, an additional amount of up to three times the economic damages, reasonable legal fees, and any other relief that the court deems appropriate. If benefits of an employee are recovered, they must be paid to the employee without cost to the employee. If the action was brought by the Attorney General, the court may award a fine of \$1,000 per violation to the State.

A person may not interfere with the exercise of, or the attempt to exercise, any right given under the bill. An employer may not take adverse action or discriminate against the employee because the employee exercised in good faith the earned sick and safe leave rights. Additionally, an employer may not take adverse action against the employee for appropriately using earned sick and safe leave. There is a rebuttable presumption that an employer violated the earned sick and safe leave provisions if the employer took adverse action against an employee within 90 days after the employee exercised specified rights. An employee who mistakenly, but in good faith, alleges a violation under the bill is protected. An employee, in bad faith, may not file a complaint with the commissioner alleging a violation, bring an action, or testify in an action regarding earned sick and safe leave. An employee who violates these provisions is guilty of a misdemeanor and on conviction is subject to a maximum \$1,000 fine.

Current Law: Maryland law does not require private-sector employers to provide employees with paid or unpaid sick leave.

Federal Family and Medical Leave Act of 1993 (FMLA)

FMLA requires covered employers to provide eligible employees with up to 12 work weeks of unpaid leave during any 12-month period under the following conditions:

- the birth and care of an employee’s newborn child;
- the adoption or placement of a child with an employee for foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;
- medical leave when the employee is unable to work due to a serious health condition; or
- any qualifying circumstance arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty.”

Generally, an FMLA-covered employer is an entity engaged in commerce that employs more than 50 employees. Public agencies are considered to be covered employers regardless of the number of individuals they employ.

An eligible employee is an individual employed by a covered employer who has been employed for at least 12 months; however, these may be nonconsecutive months. Among other criteria, the individual must have been employed for at least 1,250 hours of service during the 12-month period.

Maryland Flexible Leave Act

Chapter 644 of 2008 requires a private-sector employer who provides paid leave to its employees to allow an employee to use earned paid leave to care for immediate family members, including a child, spouse, or parent, with an illness. An employer is prohibited from taking action against an employee who exercises the rights granted or against an employee who files a complaint, testifies against, or assists in an action brought against the employer for a violation of Chapter 644.

An employer is considered a person that employs 15 or more individuals and is engaged in a business, industry, profession, trade, or other enterprise in the State, including a person who acts directly or indirectly in the interest of another employer. State and local governments are not included.

Employees who earn more than one type of paid leave from their employers may elect the type and amount of paid leave to be used in caring for their immediate family members.

Background: According to the U.S. Bureau of Labor Statistics, in 2013, 61% of workers in private-industry businesses have paid sick leave, while 89% of workers in state and local governments have paid sick leave. Private-industry businesses with fewer than 100 workers provide 51% of workers with paid sick leave.

The Institute for Women's Policy Research reported in 2013 that 40% of Maryland employees do not have paid sick days. Data from the 2011 National Health Interview Survey revealed that, when workers are limited to a maximum of 7 days of work loss, workers with paid sick days miss an average of 1.8 days annually for illness and injury excluding maternity leave. The survey also found that about half of all workers who are covered by paid sick leave plans do not take any days off for illness or injury in a given year. The Institute for Women's Policy Research reports that workers use an average of 2.8 days out of 7 days annually to care for their own medical needs, their families' needs, and for doctors' visits; and victims of domestic violence are expected to take the maximum number of earned sick days.

Paid Sick Leave in Other States and Cities

Paid sick leave is mandated in several cities and states, such as Connecticut, San Francisco, Seattle, Rhode Island, New York City, and the District of Columbia. In May 2011, the Connecticut state legislature passed legislation that mandates employers with 50 or more employees provide one hour of paid sick leave for each 40 hours worked by a service worker up to a maximum of 40 hours per calendar year. In the District of Columbia, full-time employees at businesses with 100 or more workers receive up to seven days of paid leave, employees at businesses with 25 to 99 workers receive up to five days of paid leave, and employees at businesses with 24 or fewer workers receive up to three days. Seattle employers must provide five, seven, or nine days of paid leave for employees, depending on employer size. In San Francisco, employees receive one hour of paid leave for every 30 hours worked, with a cap of five or nine days per year depending on employer size. New York City's paid sick leave law, which takes effect in April 2014, requires companies with 20 or more workers to provide at least five paid sick days a year.

Domestic Violence in Maryland

According to the *2012 Uniform Crime Report*, 17,615 domestic violence crimes were reported in Maryland, a 3% decrease compared to the calendar 2011 total of 18,209. Assault was by far the most frequently reported crime, with 16,269 incidents in calendar 2012. Of reported assaults, simple assaults comprised 13,384 incidents. Aggravated assaults totaled 2,881, or 18%, of the reported domestic violence assaults for the same period. In 2012, 22 homicides were attributed to domestic violence incidents.

State Expenditures:

Administrative Costs:

The Commissioner of Labor and Industry Employment Standards Service unit currently handles claims for unpaid sick leave. By creating a sick and safe leave policy for most employers, the bill creates additional enforcement responsibilities for DLLR's Division of Labor and Industry. DLLR cannot absorb the additional workload within existing resources and requires additional staffing to respond to the increase in inquiries and complaints prompted by a sick and safe leave policy.

The regular staff needed to respond to and manage the additional workload created by the bill includes an assistant Attorney General, an administrator, three full-time "wage and hour" investigators, and one office clerk. For the first two years, DLLR needs a similar complement of contractual staff. DLLR advises that inquiries into sick and safe leave violations are expected to increase significantly due to the bill because the State has never

had such a policy before. DLLR estimates it could receive as many as 100,000 additional inquiries each year and 5,000 complaints alleging violations. Based on prior experience, DLLR advises that the majority of employers in violation will voluntarily come into compliance with the bill's provisions after being contacted by division staff. However, a significant number of new formalized complaints must likely be investigated and processed each year by the division.

In addition to investigating and processing complaints, DLLR advises that the additional staff will conduct outreach efforts to inform employers of the new sick and safe leave policy. Additional administrative support is needed to handle phone and email inquiries, prepare and file wage orders, handle equipment and supplies, and manage complaint files. Legal staff is needed to provide advice, review wage orders, and plead cases.

General fund expenditures increase for DLLR by \$518,149 in fiscal 2015, which assumes that DLLR staff are in place as of October 1, 2014, concurrent with the effective date of the bill. This estimate reflects the cost of hiring both regular and contractual investigators, office clerks, and assistant Attorneys General as well as one regular administrator to investigate complaints and enforce the State's sick and safe leave policy. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|--|------------------|
| Regular Positions | 6 |
| Contractual Positions | 6 |
| Regular Salaries and Fringe Benefits | \$271,488 |
| Contractual Salaries and Fringe Benefits | 165,227 |
| One-time Start-up Costs | 55,720 |
| Operating Expenses | <u>25,714</u> |
| Total FY 2015 State Expenditures | \$518,149 |

Future year expenditures reflect elimination of the contractual positions, annual increases, and employee turnover as well as annual increases in ongoing operating expenses.

Labor Costs

The Department of Legislative Services (DLS) assumes the State will expand its existing sick leave policies to encompass the bill rather than implement sick and safe leave in addition to existing sick leave policies.

State employees in the State Personnel Management System (SPMS) currently accrue paid sick leave at the rate of 1.5 hours for every 26 hours worked in nonovertime status. Employees earn a maximum of 15 days or 120 hours of sick leave each year. Employees may use paid sick leave for the following:

- for illness or disability of the employee;
- for death, illness, or disability of the employee’s immediate family member;
- following the birth of the employee’s child;
- when a child is placed with the employee for adoption; or
- for a medical appointment of the employee or the employee’s immediate family member.

The bill expands the possible uses of earned sick and safe leave and defines a “family member” more broadly. As a result of the expanded circumstances to use earned sick and safe leave for all SPMS employees, the Department of Budget and Management (DBM) reports general fund expenditures may increase significantly. Additionally, 14,000 contractual employees who currently do not receive any leave benefits would earn sick and safe leave. The Maryland Department of Transportation (MDOT) predicts expenditures increase significantly because 440 temporary and contractual employees, who currently earn no sick leave, are entitled to earn sick and safe leave under the bill. The impact is greater for agencies with 24/7 operations because the additional leave option increases overtime costs. DLS concurs with DBM and MDOT that expenditures increase (all funds) for earned sick and safe leave purposes. Additionally, expenditures for DLS (and the Maryland General Assembly), the University System of Maryland, and the Judiciary likely increase for earned sick and safe leave for contractual staff. The Judiciary estimates expenditures increase \$900,000 annually. The actual impact depends on how many additional hours of earned sick and safe leave State employees take under the proposed policy.

General fund revenues increase – likely minimally – as a result of the bill’s monetary penalty provisions from cases heard in District Court.

Local Expenditures: Many local jurisdictions do not offer seasonal, part-time, or contractual workers earned sick and safe leave, so many local jurisdictions incur significant increases in expenditures. Additionally, most local jurisdictions do not define family members as broadly as the bill and may only allow a portion of earned sick days to be used to care for sick family members. Montgomery County estimates expenditures increase between \$462,000 and \$694,000 to provide earned sick and safe leave for temporary employees, and Howard County expects expenditures to increase significantly. Additionally, administrative expenses associated with recordkeeping, documentation, and notification requirements increase. However, some counties only incur minimal or no fiscal impact for allowing earned safe leave, such as Baltimore and Garrett counties, since these counties allow the earned sick leave required by the bill.

Small Business Effect: The bill has a significant impact on small businesses. According to the Institute for Women’s Policy Research, 709,400 private-sector workers do not have earned sick days in Maryland. The institute estimates it would cost Maryland employers \$165 million to provide new earned sick days for employees, which is equivalent to a 24-cents-per-hour increase in wages for employees receiving new leave. The U.S. Bureau of Labor Statistics reports the average employer cost to provide paid sick leave in 2012 was 25-cents-per-hour, or 0.9% of total compensation for private-industry workers. To the extent that mandatory sick leave increases the cost to an employer of hiring an employee, employers may experience increased costs.

Businesses may benefit by experiencing reduced turnover, increased productivity, and reduced spread of illnesses. The Institute for Women’s Policy Research estimates the bill equates to a 26-cents-per-hour savings in wages for employees receiving new leave as a result of lower turnover and reducing the spread of illnesses in the workplace.

Additional Information

Prior Introductions: A similar bill, HB 735 of 2013, received a hearing in the Economic Matters Committee and was subsequently withdrawn. Its cross file, SB 698, received a hearing in the Senate Finance Committee, but no further action was taken.

Cross File: Although SB 753 (Senator Pugh, *et al.* – Finance) is designated as a cross file, it is not identical.

Information Source(s): Baltimore, Garrett, Howard, and Montgomery counties; City of Rockville; 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; Institute for Women’s Policy Research; U.S. Department of Labor; *New York Times*; Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2014
mc/mcr Revised - Updated Information - February 18, 2014

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