

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 385 (Delegate Clippinger, *et al.*)
 Economic Matters

Labor and Employment - Maryland Healthy Working Families 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 1 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 year, must have a sick and safe leave policy that provides an employee with at least 1 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 year or use more than 80 hours of earned sick and safe leave in a year.

Earned sick and safe leave begins to accrue the later of October 1, 2015, or the date that an employee begins employment with the employer.

Fiscal Summary

State Effect: Expenditures increase (all funds) significantly due to contractual employees throughout State government receiving earned sick and safe leave. General fund expenditures increase by \$272,100 in FY 2016 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 2016	FY 2017	FY 2018	FY 2019	FY 2020
GF Revenue	-	-	-	-	-
GF Expenditure	\$272,100	\$320,800	\$272,500	\$263,100	\$275,100
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$272,100)	(\$320,800)	(\$272,500)	(\$263,100)	(\$275,100)

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. The bill does not apply to 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 year rather than awarding the leave as it accrues during the 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 for 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 complainant'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. Employer notification to employees may be distributed electronically.

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 rights granted by the bill. 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 may not, in bad faith, 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 at least 50 employees. Public agencies and public or private elementary or secondary schools 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

A private-sector employer who provides paid leave to its employees must 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 these provisions.

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.

Maryland Parental Leave Act

Firms with 15 to 49 employees are required to provide employees with unpaid parental leave benefits. An eligible employee may take unpaid parental leave up to a total of six weeks in a 12-month period for the birth, adoption, or foster placement of a child. During parental leave, the employer must maintain existing coverage for a group health plan and, in specified circumstances, may recover the premium if the employee fails to return to work. State and local governments are not included.

To be eligible for the unpaid parental leave, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months. An eligible employee does not include an independent contractor or an individual who is employed at a work site at which the employer employs fewer than 15 employees if the total number

of employees employed by that employer within 75 miles of the work site is also fewer than 15. An eligible employee has to provide the employer with 30-day prior notice of parental leave. However, prior notice is not required if the employee takes leave because of a premature birth, unexpected adoption, or unexpected foster placement.

Background: According to the U.S. Bureau of Labor Statistics, in 2014, 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 52% of workers with paid sick leave. Private-industry businesses provided on average seven days of paid sick leave per employee in 2014.

The Institute for Women's Policy Research reported in 2013 that 40% of Maryland private-sector 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 Jurisdictions

San Francisco became the first city to require private-sector employers to provide paid sick leave to their employees. According to the Institute for Women's Policy Research, the typical worker with access to either five or nine paid sick days through San Francisco's paid sick leave ordinance only used three paid sick days in 2008.

Several other cities, such as the District of Columbia, Seattle, Portland, New York City, Jersey City, Newark, and San Diego, have also enacted paid sick day laws. In 2011, Connecticut became the first state to require private-sector employers to provide paid sick leave to their employees, followed by California and Massachusetts, whose leave policies become effective in July 2015. **Exhibit 1** summarizes the paid sick leave policies of the states and the District of Columbia. Recently, bills have been introduced in the U.S. Congress proposing for workers in businesses with 15 or more employees to earn 1 hour of paid sick leave for every 30 hours worked, up to 7 days of paid leave a year. Montgomery County introduced paid sick leave legislation in 2014, Montgomery County Bill 60-14, which would require employers in the county to provide 1 hour of earned sick and safe leave for every 30 hours an employee works in the county, up to 56 hours in a calendar year.

Exhibit 1
Paid Sick Leave Policies

	California	Connecticut	Massachusetts	Washington, DC
Who is covered?	Most workers who are employed in the state for at least 30 days. Home health care workers are exempt.	Hourly workers in certain service occupations if the business has at least 50 employees. Certain manufacturers, nonprofit organizations, and temporary and day laborers are exempt.	Most workers employed in the state. Employers with fewer than 11 workers provide only unpaid sick leave.	Most workers, except independent contractors, students, certain health care workers, unpaid volunteers, and casual babysitters.
Rate of paid sick time accrual?	1 hour for every 30 hours worked	1 hour for every 40 hours worked	1 hour for every 30 hours worked	1 hour for every 87 hours worked if business employs fewer than 25 employees; 1 hour for every 43 hours worked if business employs 25-99 employees; 1 hour for every 37 hours worked for businesses with 100 or more employees.
Amount of paid sick time that can be earned per year?	Up to 24 hours or 3 days	Up to 40 hours a year	Up to 40 hours a year	Up to 24 hours a year if business employs fewer than 25 employees; up to 40 hours per year if business employs 25-99 employees; up to 56 hours per year for businesses with 100 or more employees.
Private right of action to go to court?	No, but the labor commissioner or attorney general may bring a civil action against the violator	No, but the labor commissioner may assess a civil penalty against the violator	Yes, after filing with the attorney general	Yes

Source: California Division of Labor Standards Enforcement; Connecticut Labor Commission; District of Columbia Department of Employment Services; Secretary of the Commonwealth of Massachusetts

Domestic Violence in Maryland

According to the *2013 Uniform Crime Report*, 27,785 domestic violence crimes were reported in Maryland. Assault was by far the most frequently reported crime, with 25,188 incidents in calendar 2013. Of reported assaults, simple assaults comprised 20,422 incidents. Aggravated assaults totaled 4,760, or 19%, of the reported domestic violence assaults for the same period. In 2013, 54 homicides were attributed to domestic violence incidents.

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

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 almost all 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 a part-time assistant Attorney General, an administrator, one administrative officer, and one office clerk. For the first two years, DLLR needs two contractual administrative officers. 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 20,000 additional inquiries each year and 800 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 analyzing employer leave policies and processing complaints, DLLR advises that the additional staff will develop employee notification materials and 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 \$272,086 in fiscal 2016, which assumes that DLLR staff are in place as of October 1, 2015, concurrent with the effective date of the bill. This estimate reflects the cost of hiring one regular and two contractual administrative officers, an office clerk, and a part-time assistant Attorney 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	3.5
Contractual Positions	2.0
Regular Salaries and Fringe Benefits	\$165,834
Contractual Salaries and Fringe Benefits	62,533
One-time Start-up Costs	32,230
Operating Expenses	<u>11,489</u>
Total FY 2016 State Expenditures	\$272,086

Future year expenditures reflect elimination of the two contractual positions, annual increases, and employee turnover as well as annual increases in ongoing operating expenses. If the volume of inquiries or complaints exceeds expectations, one or both contractual positions could be extended or converted to regular status.

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 both the State Personnel Management System (SPMS) and the Maryland Department of Transportation (MDOT) Transportation Service Human Resources System 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, which exceeds the bill’s minimum requirement. 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 reports expenditures may increase significantly.

Providing earned sick and safe leave to State employees who currently do not receive any leave benefits increases expenditures (all funds) significantly. The actual impact depends on how many additional hours of earned sick and safe leave State employees take. *For illustrative purposes only*, **Exhibit 2** shows the potential increase in labor costs for employees in the various personnel systems, by the number of hours of earned sick and safe leave taken by employees. When provided with 56 hours of paid leave, employees on average take 24 hours of paid leave; so under this assumption, State expenditures could increase by \$2.6 million annually. If employees used the maximum amount of leave that they could earn in a year, 56 hours, State expenditures could increase by \$6.2 million annually. If employees do not use all of their leave in one year, but rather carry their leave over to the next year, they could use a maximum amount of 80 hours of leave in a year; so the costs could fluctuate, increasing State expenditures by as much as \$8.8 million in some years.

Exhibit 2
Potential Earned Sick and Safe Leave Costs for State Employees

<u>Additional Staffing Costs</u>	<u>Employees Affected</u>	<u>Cost of 24 Hours of Paid Leave</u>	<u>Cost of 56 Hours of Paid Leave</u>	<u>Cost of 80 Hours of Paid Leave</u>
DLS employees	48	\$16,000	\$36,000	\$52,000
SPMS employees	4,235	2,035,000	4,748,000	6,782,000
MDOT employees	347	209,000	488,000	698,000
Judiciary employees	819	385,000	899,000	1,284,000
Total	5,449	\$2,645,000	\$6,171,000	\$8,816,000

Source: Department of Legislative Services

The exhibit does not include any overtime costs or the increase in expenditures for 6,442 Contingent Category I and Contingent Category II employees within the University System of Maryland (USM). USM reports Contingent Category I employees, which consists of temporary adjunct faculty and student employees, do not receive any leave benefits and Contingent Category II employees who work 40 hours per week only receive three days of sick leave, so providing seven days of earned sick and safe leave to these employees increases USM expenditures – potentially significantly.

The impact is greater for agencies with 24/7 operations because the expanded leave opportunities may increase overtime costs. Agencies with 24/7 operations within SPMS include the Department of General Services, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Department of State Police, the Department of Natural Resources, and the Department of Public Safety and Correctional Services.

Additionally, administrative expenses associated with recordkeeping, documentation, and notification requirements may increase. The Judiciary is in the process of updating its human resource management system because the current system is outdated and labor intensive. Assuming the new human resource management system is in place by the implementation of the bill, the Judiciary can track earned sick and safe leave for the additional employees with existing resources. However, if the human resource management system is not set up by the implementation of the bill, the Judiciary incurs additional expense for a contractual employee to track earned sick and safe leave of contractual and part-time employees. USM incurs a one-time cost to modify its existing human resource management system to track earned sick and safe leave, which it should be able to absorb within its existing budget.

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 does the bill and may only allow a portion of earned sick days to be used to care for sick family members. Anne Arundel County estimates expenditures could increase by \$1.2 million annually if almost 1,900 temporary employees took the maximum earned sick and safe leave days. Dorchester County estimates expenditures could increase by approximately \$20,000 annually to provide 108 part-time employees with earned sick and safe leave. 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 potentially increase significantly.

The Maryland Association of Counties notes providing earned sick and safe leave to essential personnel may strain response systems, overburden other employees, and create additional overtime expenses for local jurisdictions. Additionally, administrative expenses associated with recordkeeping, documentation, and notification requirements increase for providing earned sick and safe leave. For example, Anne Arundel County estimates incurring \$50,000 of information technology expenses in fiscal 2016 to set up and track earned sick and paid leave and spending \$10,000 annually thereafter for ongoing technical support.

However, some local jurisdictions only incur minimal or no fiscal impact for allowing earned safe leave, such as the cities of Frederick and Havre de Grace, and Baltimore and Garrett counties, since these counties provide the earned sick leave required by the bill.

Small Business Effect: The bill has a significant impact on small businesses. Based on U.S. Census data, DLS estimates approximately 220,000 employees work for Maryland employers with nine or fewer employees, so they could become eligible for unpaid sick leave under the bill, although half of these employees likely already receive paid sick leave.

DLS estimates about 550,000 employees work for Maryland employers with more than nine employees and do not receive paid sick 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. Assuming that providing earned sick and safe leave costs employers 0.9% of an employee's compensation, DLS estimates it could cost employers with more than nine employees up to \$230 million, which is approximately \$416 per employee, to provide new earned sick and safe leave to employees. 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 that a similar prior-year 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.

Employers in the service and construction industries are likely to be the most impacted by the bill because only 40% of service workers and 38% of construction workers in the private industry received paid sick leave in 2014. Additionally, employers who employ low-wage earners (average wage in the lowest 25%) are likely to be affected more than those employers who employ high-wage earners (average wage in the highest 25%) because only 30% of low-wage workers receive paid sick leave while 84% of high-wage workers receive paid sick leave in 2014.

Additional Information

Prior Introductions: Similar bills, SB 753 of 2014 and SB 698 of 2013, received a hearing in the Senate Finance Committee, but no further action was taken. HB 968 of 2014, a cross file, received a hearing in the House Economic Matters Committee, but no further action was taken. HB 735 of 2013, another cross file, received a hearing in the House Economic Matters Committee and was subsequently withdrawn.

Cross File: SB 40 (Senator Pugh, *et al.*) - Finance.

Information Source(s): Anne Arundel, Baltimore, Dorchester, Garrett, Howard, and Montgomery counties; cities of Frederick and Havre de Grace; Office of the Attorney General; Department of Budget and Management; Department of Human Resources; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Municipal League; Department of State Police; State's Attorneys' Association; Maryland Department of Transportation; University System of Maryland; Institute for Women's Policy Research; California Division of Labor Standards Enforcement; Connecticut Labor Commission; District of Columbia Department of Employment Services; Secretary of the Commonwealth of Massachusetts; U.S. Department of Labor; U.S. Bureau of Labor Statistics; U.S. Small Business Administration; Department of Legislative Services

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