

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
 First Reader

House Bill 665 (Delegate Tarlau, *et al.*)
 Economic Matters

Labor and Employment - Exemptions From Overtime Pay - Administrative, Executive, or Professional Capacity

This bill alters an exemption for specified executive, administrative, or professional (EAP) employees from the Maryland Wage and Hour Law, resulting in more workers being eligible for overtime pay. To be exempt from the law’s overtime requirements as an EAP employee, the individual must be compensated on a salary basis (1) at a rate per week of the fortieth percentile or more of weekly earnings of full-time nonhourly workers in the lowest wage census region and (2) at an amount per week, exclusive of board, lodging, or other facilities, of at least \$913 or, beginning January 1, 2020, as determined by the Commissioner of Labor and Industry. The required amount of compensation per week may be paid on a fee basis for an individual employed in an administrative or professional capacity, or translated into equivalent amounts for periods of time longer than one week.

Fiscal Summary

State Effect: The overtime provisions of the Maryland Wage and Hour Law do not apply to the State as an employer. General fund expenditures increase by \$788,143 in FY 2018 for the Department of Labor, Licensing, and Regulation (DLLR) to implement and enforce the bill. Out-year expenditures reflect annualization and the elimination of contractual staff and one-time start-up costs. The Office of the Attorney General can likely process cases with existing resources. General fund revenues increase minimally from penalties imposed on employers violating the bill and potentially from tax revenues since more employees are eligible to earn overtime.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
GF Revenue	-	-	-	-	-
GF Expenditure	\$788,100	\$849,600	\$882,400	\$916,900	\$780,900
Net Effect	(\$788,100)	(\$849,600)	(\$882,400)	(\$916,900)	(\$780,900)

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

Local Effect: The bill does not materially affect local governments. The overtime provision of the Maryland Wage and Hour Law does not apply to local governments as employers. The bill does not have a material effect on local income tax revenues. The circuit courts can likely handle any increase in litigation with existing resources.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Beginning January 1, 2020, and every three years thereafter, the Commissioner of Labor and Industry must adjust the salary threshold to reflect the fortieth percentile of weekly earnings of full-time nonhourly workers in the lowest-wage census region (currently the South) in the second quarter of the year immediately preceding the update published by the U.S. Bureau of Labor Statistics. The commissioner may adopt regulations to implement the bill.

Current Law: The Maryland Wage and Hour Law does not apply to an individual who is employed in a capacity that the Commissioner of Labor and Industry defines by regulation to be EAP. State regulation defines EAP capacity as the meaning provided under the federal regulation of the Fair Labor Standards Act (FLSA).

Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal FLSA of 1938. State law sets minimum wage standards to provide a maintenance level consistent with the needs of the population. State law specifies that an employee must be paid the greater of the federal minimum wage (which is currently \$7.25 per hour) or \$8.75 per hour. Under Chapter 262 of 2014, the State minimum wage is scheduled to increase on an incremental basis over the next two years to \$9.25 per hour as of July 1, 2017, and \$10.10 per hour as of July 1, 2018.

However, an employer may pay an employee a wage that equals 85% of the State minimum wage for the first six months that the employee is employed if the employee is younger than age 20. Additionally, an employer of an amusement or a recreational establishment, including a swimming pool, that meets specified conditions may pay an employee a wage that equals the greater of \$7.25 or 85% of the State minimum wage. Exceptions to the minimum wage requirement also exist for a training wage and a disabled employee of a sheltered workshop under specified conditions.

The Maryland Wage and Hour Law, and minimum wage requirements, do not apply to certain categories of employees, including those defined as EAP; certain seasonal employees; part-time employees younger than age 16; salesmen and those who work on commission; an employer's immediate family; drive-in 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 and has an annual gross income of \$400,000 or less; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; and certain farm workers.

An employer is required to pay an overtime wage of at least 1.5 times the usual hourly wage for each hour over 40 hours that an employee works during one work week. This requirement does not apply to an employer that is subject to federal rail laws; a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or specified amusement or recreational establishments. It also does not apply to an employee for whom the U.S. Secretary of Transportation sets qualifications and maximum hours of service under federal law; a mechanic, parts person, or salesperson, under certain conditions; a driver employed by a taxicab operator; or specified air carrier employees under certain conditions. Also, specific exemptions apply for farm work, bowling establishments, and infirmaries.

If an employer pays less than the wages required, the employee may bring an action against the employer to recover (1) the difference between the wage paid to the employee and the wage required; (2) an additional amount equal to the difference as liquidated damages; and (3) legal fees. The court must award these differences in wages, damages, and counsel fees if the court determines that an employee is entitled to recovery. However, if an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the required wages, then the court must award liquidated damages of an amount less than the difference in wages or no liquidated damages.

A person who violates the State's Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

Background: The U.S. Department of Labor issued revised regulations under FLSA to set the standard salary level for exempt EAP employees at the fortieth percentile of weekly earnings of full-time salaried workers in the lowest-wage census region and automatically update the standard salary level every three years beginning January 1, 2020, among other provisions. This rule would increase the minimum salary level for exempt employees from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually), based on data from the fourth quarter of 2015 for the lowest wage census region. The regulations were set to become effective on December 1, 2016, but a federal judge issued a nationwide

injunction on the regulation in November 2016. Thus, the minimum salary level for exempt EAP employees remains at \$455 per week, or \$23,660 annually.

State Revenues: General fund revenues increase minimally from existing penalties imposed on employers or employees violating the bill. To the extent that workers' weekly earnings rise, sales and income tax revenues may increase, but the additional revenue may be offset by businesses deducting more payroll expenses and, thus, paying lower taxes. Any change in general fund tax revenues to the State cannot be reliably projected but is expected to be minimal.

State Expenditures: The bill creates additional responsibilities for DLLR's Division of Labor and Industry by expanding the number of employers who are eligible to receive overtime pay. DLLR cannot absorb the additional workload within existing resources and requires additional staff to respond to the increase in inquiries and complaints prompted by the bill.

The regular staff needed to respond to and manage the additional workload created by the bill includes an assistant Attorney General, an administrator, six wage and hour investigators, and one office secretary. For the first four years, DLLR also needs four contractual wage and hour investigators until after the first adjustment occurs in the third year. DLLR estimates it could receive as many as 3,000 cases alleging violations annually, tripling its current caseload. DLLR advises that the existing wage and hour investigators are fully extended and cannot take on any additional cases.

Accordingly, general fund expenditures increase for DLLR by \$788,143 in fiscal 2018, which reflects the bill's October 1, 2017 effective date. This estimate reflects the cost of hiring the nine regular staff and four contractual wage and hour investigators noted above. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	9
Contractual Positions	4
Regular Salaries and Fringe Benefits	\$431,603
Contractual Salary and Fringe Benefits	106,151
One-time Start-up Costs	187,320
Operating Expenses	<u>63,069</u>
Total FY 2018 State Expenditures	\$788,143

Future year expenditures reflect the elimination of the contractual positions, full salaries with annual increases and employee turnover, and ongoing operating expenses. They also assume that the injunction on the federal regulations is not lifted. If the volume of inquiries

or complaints exceeds expectations, the contractual positions could be extended or converted to regular status.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

The Office of the Attorney General can likely process cases with existing resources.

Small Business Effect: Small businesses in the State that employ salaried EAP employees who work overtime and earn between \$23,660 and \$47,476 annually experience significant increases in their labor costs due to the bill. Approximately 80,000 employees are eligible to receive overtime pay under the bill.

The U.S. Department of Labor analyzed the costs to small businesses for implementing the federal regulations that are similar to the bill. The U.S. Department of Labor estimates for workers who are newly overtime eligible and who work regular overtime, weekly earnings are expected to rise on average 2.8%. The average total cost per affected business is \$3,265, and the range of total costs per affected business is between \$847 and \$75,059. For affected businesses, the additional overtime costs make up 0.87% of payroll costs and 0.14% of profit. The three industries with the highest total number of affected workers in small establishments are professional and technical services, health care services except hospitals, and retail trade. The largest impact as a share of payroll is projected to be in the food services and drinking places industry.

Additional Information

Prior Introductions: None.

Cross File: SB 607 (Senator Pinsky, *et al.*) - Finance.

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

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Analysis by: Heather N. Ruby

Direct Inquiries to:
(410) 946-5510
(301) 970-5510