

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 794 (Senator Hayes)
 Finance

Labor and Employment - Heightened Security Interest Locations (Secure Maryland Wage Act)

This bill requires an employer to pay specified wages and benefits to a covered employee beginning January 1, 2020. A covered employee is a nonexempt employee under the federal Fair Labor Standards Act (FLSA) who performs work at Baltimore/Washington International Thurgood Marshall Airport (BWI), Pennsylvania Station in Baltimore (Penn Station), or the Port of Baltimore.

Fiscal Summary

State Effect: General fund expenditures increase by \$234,700 in FY 2020 for the Department of Labor, Licensing, and Regulation (DLLR). Out-year expenditures reflect annualization and elimination of one-time costs. The State is not subject to the bill as an employer, but Transportation Trust Fund (TTF) expenditures for service contracts at the three affected facilities likely increase significantly. Revenues are not materially affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	234,700	226,100	232,800	240,000	247,500
SF Expenditure	-	-	-	-	-
Net Effect	(\$234,700)	(\$226,100)	(\$232,800)	(\$240,000)	(\$247,500)

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

Local Effect: The bill does not materially affect local revenues. The bill does not apply to local governments as employers. The circuit courts in Baltimore City and Anne Arundel County can likely handle any increase in litigation with existing resources.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill reports findings of the General Assembly and states the purpose of the bill is to set a higher wage standard for employees working at a heightened security interest location to promote the safety, security, and welfare of State residents.

An employer must pay a covered employee the wages or combination of wages and benefits for the 12-month period beginning January 1, 2020, and each subsequent 12-month period, that is at least the combined amount of the wage and fringe benefit rate in effect on September 1 of the preceding year for the Guard 1 Classification for the applicable county established under specified provisions of the federal McNamara-O'Hara Service Contract Act of 1965 (SCA). An employer must pay overtime wages of at least 1.5 times the usual hourly wage required under the bill for each hour over 40 hours that a covered employee works during one workweek. The bill may not be construed to prohibit an employer from beginning to pay a covered employee the wage rate in effect on September 1, sooner than required. An agreement between an employer and a covered employee to work for less than the wage required under the bill is void and is not a defense to an action taken under the bill.

The bill exempts covered employees from the Maryland Wage and Hour Law and the Living Wage Law. The bill applies to a covered employee of an employer only if at least 50% of the covered employee's time during any workweek is performed at a heightened security interest location. The bill does not diminish specified collective bargaining rights or a right that is granted under FLSA.

The Commissioner of Labor and Industry within DLLR enforces the bill's provisions as specified and may conduct an investigation on receipt of a written complaint by an employee. The commissioner may enter a place of employment as specified. The bill specifies how the commissioner must administer the bill. The bill includes employer posting and recordkeeping requirements. Specified records or statements that the commissioner or an authorized representative of the commissioner obtains are confidential, and may only be shown to the commissioner or a court.

A person aggrieved by a regulation adopted by the commissioner, or by an order to pay wages issued by the commissioner, may file a complaint in the circuit court for the county within 60 days after the publication date of the regulation or order to pay wages to have it modified or set aside. The bill describes court proceedings to address the complaint.

If an employer pays less than the wages required, the covered 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. Upon written request, the commissioner may take an assignment of the claim in trust for the covered employee, ask the Attorney General to bring an action on behalf of the covered employee, and consolidate two or more claims against an employer.

An employer may not pay or agree to pay less than the required wages, hinder or delay the commissioner or an authorized representative in enforcing the bill, take adverse action as specified in the bill, or violate any other provision of the bill. A covered employee may not make a groundless or malicious complaint to the commissioner or authorized representative or in bad faith bring or testify in an action or proceeding related to the bill.

A person who violates provisions of the bill is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000. An employer may not be convicted unless the evidence demonstrates that the employer had knowledge of the relevant complaint, testimony, or action for which the prosecution for retaliation is sought.

Current Law:

Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to FLSA. 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 \$10.10 per hour.

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 administrative, executive, or professional; 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.

The employer of a tipped employee is allowed a tip credit that can be applied against the direct wages paid by the employer. The employee can be paid tipping wages so long as the wages plus the tips received equal at least the minimum wage, the employee retains all tips, and the employee customarily receives more than \$30.00 a month in tips. The tip credit is equal to the State minimum wage, less \$3.63. Thus, the tip credit increases as the minimum wage increases, and the wage paid by employers to tipped employees remains \$3.63, as long as their wages plus tips equal the minimum wage. The State and local governments are not considered employers under the tip credit provisions of the Maryland Wage and Hour Law.

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 Maryland Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

Living Wage

Chapter 284 of 2007 made Maryland the first state to require State service contractors to pay their employees a “living wage.” For fiscal 2008, the living wage was set at \$11.30 in Montgomery, Prince George’s, Howard, Anne Arundel, and Baltimore counties and Baltimore City (Tier 1). It was set at \$8.50 for all other areas of the State (Tier 2). The living wage rates are adjusted annually for inflation by the Commissioner of Labor and Industry within DLLR. Effective September 28, 2018, the Tier 1 living wage is \$13.96 and the Tier 2 wage is \$10.49. Montgomery and Prince George’s counties and Baltimore City have local living wage ordinances that apply to their procurement of services.

Federal Fair Labor Standards Act

Similar to State law, FLSA generally requires that workers be paid a minimum hourly wage and that overtime compensation be paid to employees who work more than 40 hours in a week. However, Section 13(a)(1) of FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status.

Background: SCA requires federal contractors and subcontractors performing services on contracts valued in excess of \$2,500 to pay service employees no less than the wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. The published rate for the Guard 1 Classification in Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard counties as of September 1, 2018, is \$12.97 per hour plus a health and welfare benefit of \$4.18 per hour in addition to 1 hour of paid sick leave for every 30 hours worked, up to 56 hours of paid sick leave each year, 2 weeks of vacation after one year of service with a contractor, and a minimum of 10 paid holidays. Thus, the current combined wage and fringe benefit rate for the Guard 1 Classification is \$17.15, which far exceeds the living wage rate under State law.

State Revenues: General fund revenues are not materially affected from any increase in tax revenues or to the extent the Office of the Attorney General is awarded reasonable counsel fees and other costs.

State Expenditures:

Administrative Costs

The bill does not apply to the State as an employer, but it does apply to contractors and other employers that provide a variety of services at the three locations in the bill. It creates additional responsibilities for DLLR's Division of Labor and Industry by requiring employers to pay a specified prevailing wage to certain employees at BWI, Penn Station, and the Port of Baltimore. These changes are expected to increase the number of inquiries and complaints related to payment of those wages and increase field investigations related to the anti-retaliation provisions of the bill. DLLR cannot fully absorb the additional workload within existing resources and requires additional staff to respond to the increase in inquiries and complaints prompted by the bill.

Thus, general fund expenditures increase for DLLR by \$234,713 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring one DLLR wage and hour investigator; to conduct outreach, respond to inquiries, investigate complaints, and enforce the new requirements; one civil rights officer to investigate anti-retaliation cases; and one assistant Attorney General to handle legal proceedings. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$150,844
One-time Information Technology Expense	44,900
Other Operating Expenses	<u>38,969</u>
Total FY 2020 Administrative Expenditures	\$234,713

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Procurement Costs

Contractors that provide direct services to the State at the three locations (*e.g.*, security, building maintenance, landscaping, etc.) likely pass on any increase in their labor costs to the State. As all three facilities are funded by TTF, special fund expenditures likely increase substantially, but the amount cannot be reliably estimated.

Small Business Effect: Small businesses in the State that employ low-wage workers at BWI, Penn Station, or the Port of Baltimore who are nonexempt from FLSA and who do not have direct contracts with the State (*e.g.*, retail stores at BWI) experience significant increases in their labor costs due to the bill that are not passed on to the State. The impact is even greater for small businesses that employ tipped employees and for employers that pay subminimum wages or are exempt from being required to pay employees the State minimum wage under the Maryland Wage and Hour Law.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of General Services;

Department of Labor, Licensing, and Regulation; Maryland Department of Transportation;
U.S. Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2019
mag/mcr

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