

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1012 (Delegate Stewart)
Economic Matters

**Labor and Employment – Reinstatement of Employment – Employees at
Baltimore–Washington International Thurgood Marshall Airport (BWI–
Thurgood Marshall Workers’ Right to Reinstatement Act)**

This emergency bill requires employers providing airline catering and airport food, beverage, or retail or other consumer goods services at the Baltimore-Washington International Thurgood Marshall Airport (BWI Marshall Airport) to offer certain jobs to laid-off employees. The bill also establishes notice and recordkeeping responsibilities for those airport employers, protections and rights for affected employees, and notice, reporting, and regulatory responsibilities for the Maryland Aviation Administration (MAA).

Fiscal Summary

State Effect: Transportation Trust Fund expenditures may increase, likely minimally, for MAA to contact laid-off employees and enforce the bill’s requirements. MAA does not contract directly with affected employers, who subcontract with MAA through a contracted concessions management company. Revenues are not affected.

Local Effect: The bill is not anticipated to materially affect circuit court caseloads. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: For purposes of the bill, “laid-off employee” means an employee (1) who was employed for six months or more in the 12-month period immediately preceding the

date of the layoff and (2) whose most recent separation from active service occurred after January 31, 2020, and was due to a government order, lack of business, or a reduction in force for other economic, nondisciplinary reasons. “Employer” means an airport hospitality operation or airport service provider employer, as defined by the bill, at the BWI Marshall Airport, which includes changes in ownership or ownership structure if the new employer is conducting the same or similar operations as were conducted before January 31, 2020.

Broadly, the bill:

- requires airport hospitality operation employers and airport service provider employers at BWI Marshall Airport to (1) offer jobs that become available to qualified laid-off employees; (2) provide laid-off employees with written notice of the layoff using specified processes and including specified information; (3) provide specified information about laid-off employees to MAA; and (4) maintain records with specified information about all laid-off employees;
- prohibits these airport employers from taking specified adverse actions against an employee for using the rights and privileges granted under the bill;
- authorizes the bill to be enforced through a civil action brought by MAA or by one or more employees, as specified;
- requires MAA to (1) adopt regulations to implement the bill and (2) notify laid-off employees about their rights under the bill and other specified information; and
- authorizes MAA to provide a laid-off employee’s contact information to third-party entities providing navigation and other social services.

A discussion of each component of the bill can be found below in the following sections.

Requirements for Airport Employers

Offering of Jobs to Laid-off Employees: An employer must offer a laid-off employee all job positions that become available and for which the laid-off employee is qualified. An offer must be made in writing, by registered mail, and, in some cases, by email and text message, as specified. A laid-off employee must be given 10 days after the date the offer is received to make a determination.

A laid-off employee is qualified for a position if the employee (1) held the same position or a similar position with the employer at the time of the employee’s most recent separation from employment or (2) would be qualified for the position with the same training provided to a new employee hired for that position. An employer must offer a position to a laid-off employee who meets the first criteria and, if the position is unfilled, then offer a position to a laid-off employee who meets the second criteria. When more than one employee is entitled to a preference for a position, an employer must offer the position to the laid-off

employee with the longest record of service with the employer. If more than one employee meets these priority requirements, an employer may make simultaneous conditional offers of employment, as specified. If an employer declines to reinstate a laid-off employee due to lack of qualification, the employer must notify the laid-off employee in a specified manner.

Notice to Laid-off Employees: An employer must provide a laid-off employee with written notice of the layoff either in person or by mail and, in some cases, email and text message. The notice must include specified information and be in a language understood by the laid-off employee.

The notice must be provided at the time of the layoff; however, if the layoff occurred before the bill takes effect, notice must be provided to a laid-off employee within 20 days after the effective date of the bill.

Notice to the Maryland Aviation Administration: At the time an employer lays off employees, the employer must provide to MAA specified contact information about each laid-off employee and information about the layoff.

Recordkeeping: An employer must retain specified records for each laid-off employee for at least two years. Among other things, the records must include specified contact information about the employee and information about the employee's position with the employer.

Adverse Actions by Airport Employers

An employer may not terminate, refuse to employ, reduce compensation for, or otherwise take any adverse action against an individual for seeking to enforce the individual's rights under the bill by any lawful means, participating in proceedings related to the bill, opposing any practice prohibited by the bill, or otherwise asserting the individual's rights under the bill. The protection applies to any individual who mistakenly, but in good faith, alleges noncompliance with the bill.

There is a rebuttable presumption that an employer's action has violated the bill when a laid-off employee has exercised rights or alleged in good faith that the employer did not comply with the bill and the employer subsequently took adverse action against the employee within 60 days. Once there is a rebuttable presumption, an employer must prove that the sole reason for the action was a legitimate business reason. A laid-off employee may rebut the employer's asserted legitimate business reason by showing that it was a pretext.

Enforcement of the Bill via Civil Action

The bill may be enforced in a civil action in an appropriate circuit court brought by MAA or by one or more employees for and on behalf of themselves or other similarly situated employees, or the employee or employees may designate an agent or representative to maintain an action for and on behalf of all similarly situated employees. The bill establishes the corrective actions a court may take in its findings, including compelling compliance from the employer and awarding back pay to a laid-off employee.

Responsibilities for the Maryland Aviation Administration

MAA must use the information provided to it by employers to contact laid-off employees about their rights under the bill and other State and local programs and services from which they may benefit. At the request of a laid-off employee, MAA may provide the laid-off employee's contact information to third-party entities providing navigation and other social services.

In addition, MAA must adopt regulations to carry out and enforce the bill's requirements. By December 31, 2022, MAA must report to the General Assembly on the effectiveness of the bill in promoting employment stability and must advise the General Assembly on the need for any further legislative action.

Current Law: MAA, as a unit of the Maryland Department of Transportation, has responsibility for fostering, developing, and regulating aviation activity throughout the State. MAA is responsible for operating, maintaining, and developing BWI Marshall Airport (a State-owned airport) as a major center of commercial air carrier service in the State.

Small Business Effect: Small business entities that provide airport hospitality operations and airport services are directly affected by the bill. While these businesses can likely maintain the records required by the bill and provide notice to employees with minimal impact, the timeframe associated with employment offers may significantly affect these businesses. Specifically, MAA advises that turnover is high in the affected concession positions, and the 10 days that employers must give laid-off employees to determine whether they want to fill a position could result in business disruption.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Maryland Department of Transportation; Department of Legislative Services

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