

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 685
 Economic Matters

(Delegate Valderrama)

Finance

Labor and Employment - Secure Maryland Wage Act

This bill requires an employer to pay specified wages and benefits to a covered employee beginning January 1, 2022. A “covered employee” is a nonexempt employee under the federal Fair Labor Standards Act (FLSA) who performs work at a “heightened security interest location,” which is defined as Baltimore-Washington International Thurgood Marshall Airport (BWI Marshall Airport) or Pennsylvania Station in Baltimore (Penn Station), subject to specified exceptions.

Fiscal Summary

State Effect: General fund expenditures increase by \$213,800 in FY 2022 for the Maryland Department of Labor (MDL). 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 two affected facilities may increase beginning in FY 2025, as discussed below. Reporting requirements can be handled with existing budgeted resources. Revenues are not materially affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	213,800	190,200	195,000	201,300	207,800
SF Expenditure	0	0	0	-	-
Net Effect	(\$213,800)	(\$190,200)	(\$195,000)	(\$201,300)	(\$207,800)

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 its purpose as setting a higher wage standard for employees working at a heightened security interest location to promote the safety, security, and welfare of State residents.

Covered Employees

The bill exempts covered employees from the Maryland Wage and Hour Law but does not exempt them from 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.

Employees covered by the bill do not include individuals employed by retail establishments, food service facilities, or rental car agencies at heightened security interest locations. Construction companies and airlines also are not affected.

Required Minimum Wages

Specifically, an employer must pay a covered employee an hourly wage rate of at least:

- \$13.50 for calendar 2022;
- \$14.25 for calendar 2023;
- \$15.00 for calendar 2024; and
- \$16.00 for calendar 2025 and beyond.

Beginning January 1, 2026, an employer must also pay a covered employee an additional supplement benefit rate with a value of at least \$1.00 per hour, which is calculated by (1) applying the full supplement benefit to assist in covering the employee's share of health or other benefits, excluding paid leave; (2) applying a portion of the supplement benefit to assist in covering the employee's share of health or other benefits, excluding paid leave and paying the balance in cash; or (3) paying the entire supplement benefit in cash. 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. 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. An employer may not include a tip credit amount as part of the wage of a covered employee whose duties include providing passengers with wheelchair assistance, including a wheelchair agent or a passenger service agent. An employer of such a covered employee must allow the covered employee to receive tips and retain all tips received.

Enforcement

The Commissioner of Labor and Industry within MDL 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 circuit court 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.

Reporting Requirements

The Port of Baltimore must compare wage rates and benefit rates of employees, by employee category or job classification, working at the Port of Baltimore with the wage rates and benefit rates of employees working at the Norfolk International Terminals of the Port of Virginia and at the Port of Philadelphia and report its findings to the Governor and the General Assembly by January 1, 2022.

The Maryland Aviation Administration must compare wage and benefit rates for all employees working at BWI Marshall Airport, by employee category, job classification, and employment sector, with the wage and benefit rates for employees working at Ronald Reagan Washington National Airport and Dulles International Airport and report its findings to the Governor and the General Assembly by January 1, 2022.

Current Law: For a description of Maryland’s enforcement of minimum wages, please see the **Appendix – Maryland Wage and Hour Law**.

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 Anne Arundel, Baltimore, Howard, Montgomery, and Prince George’s 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 MDL. Effective September 28, 2020, the Tier 1 living wage is \$14.42 and the Tier 2 wage is \$10.83. 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 \$684 per week. Job titles do not determine exempt status.

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 two locations in the bill. It creates additional responsibilities for MDL’s Division of Labor and Industry by requiring employers to pay a specified prevailing wage to certain employees at BWI Marshall Airport and Penn Station. 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. MDL 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 MDL by \$213,782 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one MDL 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 half-time assistant Attorney General to handle legal proceedings. It includes salaries, fringe benefits, one-time start-up costs (including programming expenses), and ongoing operating expenses.

Positions	2.5
Salaries and Fringe Benefits	\$130,440
One-time Information Technology Expense	44,900
Other Operating Expenses	<u>38,442</u>
Total FY 2022 Administrative Expenditures	\$213,782

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 two locations (*e.g.*, security, building maintenance, landscaping, etc.) likely pass on any increase in their labor costs to the State. The Maryland Department of Transportation expects contract costs paid from TTF to increase by at least \$750,000 in fiscal 2022. However, the Department of Legislative Services notes that both locations in the bill are in Tier 1 jurisdictions under the Living Wage Act, so service contractors in those locations are already generally required to pay their employees at least \$14.42 per hour. That rate exceeds the rates established by the bill for both calendar 2022 and 2023. Inflation adjustments through calendar 2024 likely bring the Tier 1 living wage rate close to the \$15.00 wage rate required

by the bill for that year. Thus, any effect on State service contracts in the two affected locations is expected to be negligible at least through fiscal 2024. TTF expenditures may, however, increase beginning in fiscal 2025 to pay the higher wages, which exceed both minimum wage and living wage rates in current law.

Small Business Effect: Except for exempt employers under the bill, small businesses in the State that employ low-wage workers at BWI Marshall Airport or Penn Station who are nonexempt from FLSA and who do not have direct contracts with the State 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: SB 62 of 2020, a similar bill, received a hearing in the Senate Finance Committee, but no further action was taken. Its cross file, HB 1410, received a hearing in the House Economic Matters Committee, but no further action was taken. Another similar bill, SB 794 of 2019, received a hearing in the Senate Finance Committee, but no further action was taken. Another similar bill, HB 629 of 2019, received a hearing in the House Economic Matters Committee and was later withdrawn.

Designated Cross File: SB 107 (Senator Hayes) - Finance.

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

Fiscal Note History: First Reader - January 27, 2021
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Analysis by: Michael Sanelli

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

Appendix – Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act, which specifies minimum wage and overtime requirements for employers and employees in the State. Chapters 10 and 11 of 2019 increase the State minimum wage rate for employers with 15 or more employees in increments until the full phase-in of \$15.00 per hour on January 1, 2025. For employers with 14 or fewer employees, the wage rate reaches full phase-in on July 1, 2026.

The Board of Public Works (BPW), however, may temporarily suspend one scheduled increase in the State minimum wage for one year between October 1, 2020, and October 1, 2024, if it determines that the seasonally adjusted total employment is negative as compared with the previous six-month period. If total adjusted employment is negative, BPW may also consider the recent performance of State revenues in making its determination.

The Acts specify that, unless the federal minimum wage is set at a higher rate, the State minimum wage for employers with 15 or more employees is as follows:

- \$11.75 per hour as of January 1, 2021;
- \$12.50 per hour as of January 1, 2022;
- \$13.25 per hour as of January 1, 2023;
- \$14.00 per hour as of January 1, 2024; and
- \$15.00 per hour as of January 1, 2025.

The State minimum wage for an employer that employs 14 or fewer employees is as follows:

- \$11.60 per hour as of January 1, 2021;
- \$12.20 per hour as of January 1, 2022;
- \$12.80 per hour as of January 1, 2023;
- \$13.40 per hour as of January 1, 2024;
- \$14.00 per hour as of January 1, 2025;
- \$14.60 per hour as of January 1, 2026; and
- \$15.00 per hour as of July 1, 2026.

An employer may pay 85% of the State minimum wage rate to employees younger than age 18.

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.

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