

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 727
 Finance

(Senator Feldman)

**Maryland Healthy Working Families Act – Revisions and Public Health
 Emergency Leave**

This emergency bill requires employers in the State to provide additional sick and safe leave to employees during public health emergencies, including the current and ongoing COVID-19 pandemic. The bill also (1) applies the requirements of the Maryland Healthy Working Families Act (MHWFA) to additional employees in the State and (2) expands the definition of “family member” in reference to MHWFA, thereby allowing employees to use sick and safe leave earned under the act to provide care and/or legal services to additional individuals.

Fiscal Summary

State Effect: General fund expenditures increase by \$93,200 in FY 2021 and \$284,200 in FY 2022 for the Maryland Department of Labor (MDL) to enforce the bill’s requirements; out-year expenditures reflect the elimination of one-time costs. State expenditures (all funds) may increase, potentially significantly, to provide additional paid sick and safe leave to employees under the bill, as discussed below; these costs are not reflected below. Revenues are not affected.

| (in dollars) | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|----------------|------------|-------------|-------------|-------------|-------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 93,200 | 284,200 | 292,200 | 300,500 | 310,900 |
| Net Effect | (\$93,200) | (\$284,200) | (\$292,200) | (\$300,500) | (\$310,900) |

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

Local Effect: Local government expenditures may increase, potentially significantly, to provide additional paid sick and safe leave to employees, as discussed below. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Maryland Healthy Working Families Act – Application

The bill applies MHWFA to workers who are currently exempt from receiving benefits under the act by repealing exceptions to the definition of employee and repealing exceptions to the types of employees that are covered by the act. As a result, the bill requires an employer to grant sick and safe leave under MHWFA to workers:

- employed in the agricultural sector or an agricultural operation;
- employed by specified temporary services agencies to provide temporary staffing services to another person;
- that are directly employed by an employment agency to provide part-time or temporary services to another person; and
- that (1) are called to work by the employer on an as-needed basis in a health or human services industry; (2) can reject or accept the shift covered by the employer; (3) are not guaranteed to be called on to work by the employer; and (4) are not employed by a temporary staffing agency.

Use of Sick and Safe Leave under Maryland Healthy Working Families Act and the Bill

The definition of “family member” is expanded to include (1) a child of an employee’s domestic partner and (2) any other individual related by blood to or whose close association with the employee is the equivalent of a family relationship. Additionally, instead of the spouse of an employee being included in the definition, the bill specifies that the individual recognized as the employee’s spouse or domestic partner or as being in a similar union with the employee under the laws of any state or jurisdiction is included in the definition.

As a result of these changes, an employee covered by MHWFA may use sick and safe leave to provide care and/or legal services for those individuals in the manner authorized by MHWFA under current law and during public health emergencies under the bill.

Additional Sick and Safe Leave Required during Public Health Emergencies

If a public health emergency is declared or proclaimed for a jurisdiction, each employer in the jurisdiction must provide each employee with paid sick and safe leave that is in addition to the paid sick and leave required under MHWFA. The bill requires that 112 additional hours be provided for full-time employees who regularly work 40 hours or more per week

and requires that the number of hours for other employees be calculated in a specified manner based on the average number of hours an employee works in a multi-week period.

Within seven days after a public health emergency is declared or proclaimed, each employer must provide each employee with written notice of the public health emergency and the employee's right to additional paid earned sick and safe leave under the bill. If a public health emergency continues for a period longer than three months, each employer must provide the notice every three months. MDL must create and make available a poster and a model notice at no charge to an employer that can be used to disseminate this information; each employer must provide the information to employees in English, Spanish, and any other language that is the first language spoken by at least 25% of the employer's employees.

The bill establishes the following requirements related to the use of this additional paid sick and safe leave.

- If an employer has already provided emergency sick and safe leave under the bill, the employer is not required to provide additional leave (1) on the renewal of the public health emergency declaration or proclamation or (2) on the issuance of a public health emergency declaration or proclamation by another jurisdiction for the same emergency.
- The additional leave must be provided to an employee under the bill regardless of the employee's length of employment with the employer.
- Each employer must allow an employee to use the additional leave during the three weeks immediately following the official termination or suspension of the public health emergency.
- An employee may use the additional leave for specified purposes, including, among other things, (1) to isolate without an order to do so because the employee has been diagnosed with a communicable disease or is experiencing related symptoms; (2) to care for a child or other family member under specified circumstances; or (3) due to the closure of the employer's business due to a public health emergency.
- An employee may use the additional leave before using other sick and safe leave earned under MHWFA.
- An employer may require an employee to provide notice to use the additional leave only under specified circumstances.
- An employer may not require an employee to provide documentation for the use of the additional leave.
- The additional sick and safe leave does not count toward the limits on sick and safe leave use that an employer may place on the use of sick and safe leave under MHWFA.

Application to the COVID-19 Pandemic

If the public health emergency that was declared or proclaimed due to the COVID-19 pandemic remains in effect on the effective date of the bill, each employer must (1) provide the additional paid sick and safe leave required by the bill to employees on the effective date of the bill and (2) apply the additional leave retroactively for employees employed on the effective date of the bill back to the date the public health emergency was declared or proclaimed.

Adverse Actions to Dissuade the Use of Sick and Safe Leave

Part of the definition of “adverse action,” in reference to the prohibition on an employer from taking adverse actions against an employee who utilizes their rights under MHWFA, is altered from “any other retaliatory action that results in a change to the terms or conditions of employment that would dissuade a reasonable employee from exercising a [MHWFA] right” to “any other retaliatory action that results in a change to the terms or conditions of employment *or* that would dissuade a reasonable employee from exercising a [MHWFA] right.”

Current Law: MHWFA requires an employer with 15 or more employees to have a sick and safe leave policy under which an employee earns at least 1 hour of paid sick and safe leave, at the same rate as the employee normally earns, for every 30 hours an employee works. An employer with 14 or fewer employees, based on the average monthly number of employees during the preceding year, must at least 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 employee is eligible to use sick and safe leave under specified circumstances, including 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; and to care for a family member with a mental or physical illness, injury, or condition. Several of the authorized reasons for taking leave align with potential usage needs during the pandemic. An employer may not require an employee to exhaust leave provided under MHWFA before taking leave granted under the Families First Coronavirus Response Act (FFCRA).

FFCRA helps combat the workplace effects of the pandemic by reimbursing, in the form of tax credits, private employers with fewer than 500 employees for the cost of providing employees with paid leave taken for specified reasons related to COVID-19. FFCRA also requires certain employers to provide their employees with paid sick leave under the Emergency Paid Sick Leave Act (EPSLA) and expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act (EFMLEA) for specified reasons related to COVID-19.

Under EPSLA, employees of covered employers are eligible for two weeks (up to 80 hours) of paid sick leave for specified reasons related to COVID-19. EFMLEA requires specified employers to provide up to 10 weeks of paid and 2 weeks of unpaid expanded family and medical leave. The leave is paid at a rate of two-thirds of the employee’s regular rate of pay and is available if an employee has been employed for at least 30 calendar days and is unable to work due to a *bona fide* need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. EFMLEA only provides leave for reasons related to COVID-19.

For information on the COVID-19 pandemic, please see the **Appendix – COVID-19 Pandemic**.

State/Local/Small Business Expenditures:

State Enforcement Costs

As noted above, the bill applies MHWFA to additional industries and employees; the agricultural workers, temporary workers, and workers in call-in industries being included are located throughout the State. Moreover, the bill expands how MHWFA leave can be used and requires employers to provide paid sick and safe leave during public health emergencies, including the current and ongoing COVID-19 pandemic. These changes create new enforcement responsibilities for MDL, which cannot be absorbed by existing staff. Therefore, general fund expenditures by MDL increase by \$93,233 in fiscal 2021 and \$284,227 in fiscal 2022. This estimate reflects the cost of hiring four administrative officers to answer questions and receive and investigate complaints. The estimate assumes that the bill takes effect and staff are hired on April 1, 2021, (given the bill’s emergency status). It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | <u>FY 2021</u> | <u>FY 2022</u> |
|---|-----------------------|-----------------------|
| New Positions | 4.0 | - |
| Salaries and Fringe Benefits | \$69,118 | \$269,207 |
| Operating Expenses | <u>24,115</u> | <u>15,020</u> |
| Total MDL Enforcement Expenditures | \$93,233 | \$284,227 |

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. MDL may require fewer staff in future years, depending on when the current public health emergency ends and how many inquiries and complaints MDL continues to receive afterward (MDL anticipates receiving complaints and conducting investigations for multiple years after the end of the current public health emergency). Even so, for purposes of this analysis it is assumed the MDL maintains the additional staff for the entire five-year period covered by this fiscal and policy note.

Costs for Employers during Public Health Emergencies

Expenditures by employers, including State agencies, may increase to provide emergency-related paid sick and safe leave to workers in the manner required by the bill. Since MHWFA already requires employers with 15 or more employees to provide paid sick and safe leave to workers, expenditures only increase for an employer to provide the additional leave if (1) the worker uses more paid leave than the worker otherwise would have, absent the bill or (2) the employer has 14 or fewer employees and, therefore, does not provide paid sick and safe leave for workers. Since the bill requires the additional leave to be provided to all employees during a public health emergency (including the current and ongoing COVID-19 pandemic), all employers, including State agencies, may experience additional costs, some of which are likely to be significant.

Costs may be greater for employers (including public safety employers) that require 24/7 coverage due to having to pay for overtime and/or temporary employees to cover shifts for employees taking leave. Additionally, costs are anticipated to be significant for small businesses with 14 or fewer employees that are not currently providing paid sick and safe leave to employees under MHWFA.

Employers in the State experience similar costs during any future public health emergency; however, the occurrence of any such emergency cannot be predicted.

Costs Due to Expansion of the Maryland Healthy Working Families Act

The bill repeals various exemptions to MHWFA, applying the requirements of the act to additional industries and employees in the State. Expenditures for these businesses, some of which are likely to be small businesses, increase potentially significantly as sick and safe leave, either paid or unpaid, is provided through MHWFA.

Additional Comments: MDL advises that the bill's change to the definition of "adverse action" may inadvertently prohibit certain incentive programs used to reward employees who do not use some or all of their sick leave. Specifically, the bill includes in the definition any retaliatory action that would dissuade a reasonable employee from exercising a right under MHWFA. Some incentives used by employers (such as wellness pay paid to an employee at the end of the year when sick and safe leave is not used) can be interpreted to violate the requirements of MHWFA under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1326 (Delegate Dumais) - Economic Matters.

Information Source(s): Maryland Department of Labor; Maryland Department of Transportation; University System of Maryland; Judiciary (Administrative Office of the Courts); Maryland Association of County Health Officers; Montgomery and Worcester counties; Maryland Municipal League; Department of Legislative Services

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Appendix – COVID-19

In December 2019, a novel strain of coronavirus known as severe acute respiratory syndrome coronavirus 2 emerged in Wuhan, China. Coronavirus disease (COVID-19) is an infectious disease caused by this virus. As the number of cases spread globally by March 2020, the World Health Organization declared COVID-19 a pandemic.

Testing, Cases, and Deaths in Maryland

Maryland's first three confirmed cases of COVID-19 were recorded on March 6, 2020, with the first two deaths occurring March 16, 2020. As of January 27, 2021, Maryland reported a total of 346,559 confirmed cases, 31,468 individuals ever hospitalized, and 6,821 confirmed deaths. The jurisdictions with the highest number of cases have been Prince George's, Montgomery, and Baltimore counties and Baltimore City. Statewide, 8.4% of cases (28,954) and 45.9% of COVID-19 deaths (3,130) occurred in congregate living settings (*i.e.*, nursing homes, assisted living, and group homes). Updated data on COVID-19 in Maryland is available on the Maryland Department of Health (MDH) dashboard: <https://coronavirus.maryland.gov>.

Vaccines

In December 2020, the U.S. Food and Drug Administration approved both Pfizer-BioNTech and Moderna's COVID-19 vaccines for emergency use. Due to limited quantities, distribution began with priority groups as determined by states. Maryland began distribution in January 2021 with Phase 1A, which includes health care workers, residents and staff of nursing homes, first responders, public safety, corrections staff, and front-line Judiciary staff. Phase 1B began January 18, 2021, and includes residents of assisted living facilities and other congregate settings, adults age 75 and older, staff of K-12 schools and child care facilities, high-risk incarcerated individuals, and those involved in continuity of government. As of January 27, 2021, the State is in Phase 1C, which includes adults aged 65 and older, additional public safety and public health workers, and essential workers in food/agriculture, manufacturing, public transit, and the postal service. Phase 2 will include individuals aged 16 to 64 at increased risk of severe illness, incarcerated adults, and remaining essential workers. Phase 3 will include the general public. As of January 27, 2021, 852,625 doses of the vaccine have been distributed, and 419,579 doses have been administered (363,282 first doses and 56,297 second doses). Updated data is available on the MDH dashboard: coronavirus.maryland.gov/#Vaccine.

Declaration of a State of Emergency and Initial Executive Orders

On March 5, 2020, Governor Lawrence J. Hogan, Jr. declared a state of emergency and the existence of a catastrophic health emergency to deploy resources and implement the emergency powers of the Governor to control and prevent the spread of COVID-19. The declaration, which has been renewed several times (most recently January 21, 2021), initiated a series of executive actions, including moving the Maryland Emergency Management Agency to its highest activation level, activating the National Guard, and closing all public schools. The Governor then ordered the closure of in-house dining at bars and restaurants and banned mass gatherings of more than 50 people. This action was followed by a more extensive stay-at-home order on March 30, 2020, requiring closure of all nonessential businesses. This order remained in effect until May 15, 2020.

Emergency Legislation

Chapters 13 and 14 of 2020 (the COVID-19 Public Health Emergency Protection Act of 2020) authorized the Governor, for the duration of the emergency, to take actions relating to health insurance, Medicaid, retailer profits, employer actions, and personnel at State health care facilities as a result of the state of emergency and catastrophic health emergency. The Acts also authorize the Secretary of Labor to determine certain individuals eligible for unemployment insurance (UI) benefits due to COVID-19. The Acts terminate April 30, 2021.

Subsequent Executive Orders and Advisories

Since March 2020, the Governor has issued numerous executive orders relating to COVID-19, including (1) closing Maryland ports and harbors to passenger vessels; (2) expanding child care access; (3) expanding the scope of practice for health care practitioners, activating the Maryland Responds Medical Reserve Corps, controlling and restricting elective medical procedures, closing adult day care centers, and providing additional health care regulatory flexibility; (4) augmenting emergency medical services; (5) prohibiting price gouging; (6) fast tracking lab testing processes; (7) authorizing expanded telehealth services; (8) delegating authority to local health officials to control and close unsafe facilities; (9) extending certain licenses, permits, and registrations; (10) authorizing remote notarizations; (11) prohibiting evictions of tenants suffering substantial loss of income due to COVID-19, additionally prohibiting certain repossessions, restricting initiation of residential mortgage foreclosures, and prohibiting commercial evictions; (12) regulating certain businesses and facilities and generally requiring the use of face coverings; (13) establishing alternate health care sites and authorizing regulation of patient care space in health care facilities; and (14) implementing alternative correctional detention and supervision.

Federal Legislation Regarding COVID-19

Five federal emergency bills have been enacted to address the COVID-19 pandemic:

- the **Coronavirus Preparedness and Response Supplemental Appropriations Act**, which provided \$8.3 billion in emergency funds for federal agencies (including \$950 million through the U.S. Centers for Disease Control and Prevention for state and local response);
- the **Families First Coronavirus Response Act**, which addressed emergency family and medical leave and paid sick leave, specified insurance coverage of COVID-19 testing, and provided additional funding for nutrition assistance programs and unemployment benefits;
- the **Coronavirus Aid, Relief, and Economic Security (CARES) Act**, which included a Coronavirus Relief Fund for state and local governments; an Education Stabilization Fund for states, school districts, and institutions of higher education; a Disaster Relief Fund for state and local governments; additional funding for public health agencies to prevent, prepare for, and respond to COVID-19; funding for transit systems; an expansion and extension of eligibility for UI benefits, and additional temporary unemployment compensation of \$600 per week; \$349 billion for the establishment of the Paycheck Protection Program (PPP); a \$500 billion lending fund for businesses, cities, and states; and Economic Impact Payments to American households of up to \$1,200 per adult and \$500 per child;
- the **Paycheck Protection Program and Health Care Enhancement Act**, which provided an additional \$310 billion to PPP, \$75 billion for health care providers, \$60 billion for small business disaster loans, and \$25 billion for increased testing capacity; and
- the **Consolidated Appropriations Act, 2021, and Other Extensions Act**, which included \$908 billion in relief, including another \$284 billion for PPP, \$82 billion for schools, \$45 billion for transportation, \$25 billion in emergency assistance to renters, \$20 billion for vaccine distribution, \$13 billion for a major expansion in Supplemental Nutrition Assistance benefits, \$13 billion for agriculture and rural programs, \$10 billion for child care assistance, extended federal unemployment benefits of up to \$300 per week, extended the federal moratorium on evictions through January 31, 2021, and provided a second stimulus payment of up to \$600 per person.

Federal Funding for Maryland to Address COVID-19

The CARES Act and the Families First Coronavirus Response Act provided Maryland with a significant amount of federal aid. More than \$6 billion in assistance has been made available to the State and local governments, including an enhanced federal matching rate for Medicaid. More than \$900 million was directly provided to local governments. The largest and most flexible portion of CARES Act funding is the Coronavirus Relief Fund, which totals \$2.3 billion, \$691 million of which was allocated directly to Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties.

CARES Act funding also included \$800 million for the Disaster Recovery Fund; \$696 million for transit grants; \$575 million in enhanced Medicaid matching funds (through December 2020); \$239 million in CDC grants; \$108 million for airports; \$74 million for community development block grants; \$50 million for homelessness assistance; \$46 million for grants for local education agencies and higher education institutions; \$46 million for child care and development block grants; \$36 million for public housing and rental assistance grants; \$24 million for community health centers; \$20 million for senior nutrition; \$19 million for energy assistance; \$18 million for justice assistance grants; \$17 million for administration of the UI program; \$14 million for community service block grants; \$13 million for emergency food assistance; \$8 million for Head Start; \$8 million for the Women, Infants, and Children program; and \$7 million for election security.

The Consolidated Appropriations Act is estimated to provide Maryland with \$1.2 billion for education (including \$869 million for K-12 education, \$306 million for higher education, and \$57.7 million for the Governor's Fund); \$1.1 billion for transportation (including \$830.3 million for transit in the Washington, DC area, \$149.3 million for highways, \$76.2 million for transit in Baltimore, \$22.5 million for airports, and \$9.1 million for rural area grants); more than \$475 million for health (including \$335.6 million for testing, \$75.3 million for vaccines, \$32.6 million for mental health assistance, and \$31.9 million for substance use assistance); \$402.4 million for rental assistance; and \$140.6 million for human services (including \$130.4 million for child care).