



**SB 486- Labor and Employment- Employment Standards During an
Emergency (Maryland Essential Workers' Protection Act)**

Senate Finance Committee

Position: Unfavorable

February 11, 2021

Written Comments: The Maryland Retailers Association is in strong opposition to this legislation for the following reasons:

1. The definition of “emergency” in the legislation denoting when the proposed regulations would apply is far too broad. States of emergencies include weather events for instance that would not necessitate the costly and burdensome components in this legislation. (Page 2, line 29 and page 3, beginning on line 18)
2. Applicable emergencies need to be clearly defined so that a subjective decision by an agency about whether an emergency “is occurring or has occurred” is not the determinant for when the proposed regulations to apply. (Page 10, line 1-2)
3. Many businesses have financially suffered greatly during COVID with many operating on far less than what they were making pre-pandemic. Forcing small businesses to shoulder these additional costs and burdens will undoubtedly result in more closures and layoffs, placing more strain on the state’s unemployment system.
4. Mental distress is not equally measurable from person to person and thus is a very broad and subjective term that should be removed from the bill. (Page 10, line 21-22)
5. Supply of personal protective equipment should be based on availability through the supply chain. For example, at certain points in 2020, no one could obtain single-use masks, and some cleaning products are still not widely available. (Page 10, line 24)
6. The State and/or the Maryland Emergency Management Agency should provide a template that can be used by businesses to develop emergency management plans. Emergency management protocols and plans should be developed by experts to ensure proper safety and clear responses for businesses, and it is not appropriate for a business without any level of expertise in this area to develop such a plan. (Page 10, line 26-28, and Page 13, beginning on line 20)
7. The requirement that employers provide or implement “other measures or requirements to ensure the general health and safety of essential workers” is unclear and should be stricken from the bill. (Page 11, lines 1-3)

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8. The language “a reasonable threat to a worker’s health or safety” in the definition of “unsafe work environment” is far too broad. Based on the last year, no one would have worked based on this terminology and access to necessities would be completely shut down without workers. (Page 11, lines 5-9)
9. The reference to an employer’s failure to provide PPE as an example of an unsafe work environment is of great concern. Supply chain issues have and will occur during a crisis, and as such, there should be exceptions for supplies that cannot be procured due to issues outside an employer’s control. (Page 11, line 12)
10. An employer’s failure to notify employees of “illnesses” is far too broad and could be interpreted to mean that an employer has created an “unsafe work environment” for failure to notify the entire workforce that one individual has a common cold or flu, which is impossible for an employer to accurately track in a real work environment. (Page 11, lines 18-21)
11. Every single person in the world feared for their health this past year. Allowing any and all essential workers refuse to report to work for fear of their health could and likely would massively compromise a business’s operation. (Page 11, beginning on line 22)
12. An individual’s health information is private. Sharing the health information of other employees is a privacy issue. The employers may not know about an employee’s exposure and, as it is often impossible to determine where exposure has occurred, the language regarding whether an infectious disease was contracted at the worksite should not be in the bill. Additionally, referring to an “infectious disease” presents issues as this could include the common cold or flu and have nothing to do with an officially declared emergency. (Page 14, beginning on line 19)
13. Evacuating an entire worksite until it has been “properly sanitized” is unnecessary and the terminology is subjective. (Page 14, lines 25-26)
14. COVID-19 testing is provided by the State and there are many private testing locations free of charge. As such, it is unnecessary and redundant to require an employer to pay for testing. Additionally, because the bill is so broad, this requirement could be interpreted to apply to testing for any and every illness that could be contracted at a worksite, including exposure to strep throat from a coworker with school-aged children. (Page 14, beginning on line 27)
15. The bill’s definition of “family member” should mirror the definition used in the federal Family and Medical Leave Act. (Page 15, beginning on line 23)
16. With regard to COVID-19, the CDC states that a person may return to work if they are asymptomatic after a week. The corresponding section of the bill does not follow CDC recommendations or recognize and include current federal and

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- state leave emergency orders or laws such as the Families First Coronavirus Response Act: Employee Paid Leave Rights and paid sick leave at the state level. (Page 16, line 22)
17. Such high levels of additional hazard pay are unnecessary, particularly considering the very broad definitions of “emergency” and “illness” referenced in the bill. (Page 17, line 11)
 18. This bill would require employers to provide retroactive payments dating to the start of the state of emergency. Not only is this costly, but it would put businesses under and cause closures. Grocery stores as an example, which operate on 1-3% profit margins, closed in Long Beach, California after a similar law was enacted there. (Page 17, lines 16-17)
 19. Hazard pay should be counted as a part of an employee’s wage analysis for benefit programs. (Page 17, line 20-22)
 20. An employer should not be responsible for “unreimbursed health care costs” for employees. Most small businesses can barely afford the health insurance they provide to employees. (Page 17, lines 23-26)

With these concerns in mind, we urge unfavorable report.