



OUR MISSION:

Working to enhance the economic prosperity of greater Silver Spring through robust promotion of our member businesses and unrelenting advocacy on their behalf.

**SB486 – Labor and Employment - Employment Standards During an Emergency
(Maryland Essential Workers' Protection Act)**

**Senate Finance Committee
February 11, 2021
UNFAVORABLE**

On behalf of the Greater Silver Spring Chamber of Commerce, representing 400 member organizations, including very small businesses with fewer than ten employees and several nonprofits, in the greater Silver Spring area of Montgomery County, I write to express our opposition to SB486 - Labor and Employment - Employment Standards During an Emergency (Maryland Essential Workers' Protection Act).

Senate Bill 486 would create a number of new programs and employer mandates, and resulting costs, during a declared state of emergency. These include: 1) an additional \$3/hour of hazard pay, 2) employer reimbursement of healthcare costs, 3) a new leave program for bereavement and health leave, 4) employee right to refuse work, 5) workplace safety standards, and 6) health emergency preparedness plans.

These regulations would be excessive and onerous. The definition of “emergency” as contained within the bill is overly broad, ambiguous, and extends far beyond the scope of the pandemic and public health emergency that we are presently navigating as a result of COVID-19. Based on this definition, a snowstorm, a day of high winds, a ransomware attack, or even a stock market crash could be interpreted as an “emergency,” unduly subjecting all employers defined as essential to the rest of the provisions contained within the bill. Such a definition is subjective and can be interpreted many different ways, something that the General Assembly has always avoided in drafting state statutes.

The definition of essential worker is too broad and encompasses most employers in Maryland, including very small businesses. Nearly every type of employer in Maryland is included in the scope of the legislation, regardless of risk-profile. In fact, 15 industry sectors that contain a combined total of 76 categories are defined as essential employers in the legislation. The hazard pay alone will irreparably damage these businesses and making that pay retroactive will completely decimate most employers that worked hard to stay in business during the pandemic.

Our businesses, especially our small businesses cannot reasonably be expected to comply with the overly broad and unwell-defined mandates contained within Senate Bill 486, especially now, as they struggle to juggle previously passed employer mandates and the operational and economic implications of COVID-19.

Throughout the current pandemic, our organization and our members have remained committed to doing our part to mitigate the impact of COVID-19. The health and safety of our members, their employees, and the general public remains our top priority.

All employers want to provide a safe environment for their workers. Our members have made good faith efforts following CDC and Maryland guidance to implement safety protocols during the pandemic. Employers should not bear the burden of paying for unreimbursed health care costs related to the emergency, especially when the employee is not even required to provide proof that they contracted the illness in their place of work.

The section of the bill that refers to Unsafe Work Environment includes more undefined terms and concepts that cause confusion and inconsistency. For example, what is meant by “unsanitary conditions”? What constitutes a “reasonable threat”? By whose definition? The examples provided are inconsistent with the definition. Moreover, the definition of “unsafe” is unclear in this context. We believe that “unsafe” should be clearly defined to be directly related to the declared emergency, not just a general code or other violation, which are already governed by existing state/federal laws and regulations.

The section of the bill that deals with Working Conditions introduces undefined terms that are either difficult to define, subject to differing interpretation, or exist on a spectrum. For example, it is unclear what is meant by “physical harm,” “mental distress,” and “physical health and safety.” It is unreasonable to hold an employer accountable for the “mental distress” of an employee, as “mental distress” exists on a spectrum and highly subjective. Further, there is no mechanism for proving or verifying that the “mental distress” occurred at the workplace and/or is in any way related to the emergency.

There is also no definition provided for “physical health and safety,” and no acknowledgement that there is some risk to physical health and safety at all times for all people. Further, there are certain sectors where the potential for physical harm is greater and is accepted as part of the job (police and firefighters, for example), which is not currently addressed in the bill. Once again, there is no mechanism for proving that the threat to “physical health and safety” is related to the emergency.

Among the most ludicrous provisions of the bill is allowing employees, at their discretion, to refuse to go to work, especially when their employer has taken good faith precautions to protect employees and customers. The bill is without mechanism for addressing abuse or verification by the employer. In addition, it is not clear that this would not apply to teleworking employees of essential employers, as defined by the bill. We already have a huge workforce shortage due to the disincentives provided by the additional federal Pandemic Unemployment Compensation. Many of our members experienced this during several months last year. Despite the fact that an individual no longer qualifies for unemployment benefits after he or she has been offered a position to come back to work, we found that many people would rather sit at home and collect unemployment than work. This left thousands of jobs unfilled, required businesses to reduce hours, resulted in fewer products and services because employers were too short-staffed to meet the needs of their customers. This is an additional strain on the Unemployment Insurance fund that is already overloaded. And to reduce that strain, this bill would put the onus back on an employer for someone refusing to report to work to fulfill their responsibility. If an individual determines that the line of work, they have chosen is too dangerous, then they are free to choose another line of work.

The bill would require all businesses to develop extensive emergency preparedness plans, for whatever emergency might occur. Small businesses have neither the capacity nor expertise to do this, nor do they have the financial resources to hire legal and other experts to do it for them. This section of the bill also requires “mechanisms for notifying essential workers of positive test results for illness,” yet it does not specify what type of illness. For example, are employers to be required to issue such notification for the flu or a common cold?

The bill would require employers to provide hazard pay for each pay period that the essential worker works at a rate of \$3/hour, but there is confusion in the bill language regarding how this provision is to be applied. The bill is intended to apply prospectively, yet there is a provision in this section that states that an essential worker is eligible for hazard pay dating back to the start of the emergency. Legislation that is both retroactive and prospective as to the same provision cannot be complied with and is wholly unworkable. Small businesses, who have no notice, and limited or no capacity to pay such wages, are not equipped to provide hazard pay. Such a provision constitutes unfair surprise, lack of due process, and an unconstitutional taking without just compensation.

The bill would create a new program of leave just for a health emergency, something our members find superfluous. Maryland already has a mandated paid sick and safe leave law. The legislation creates a new leave program whereby employers will be required to provide at least 3 days of bereavement leave and 14 days of health leave. Health leave is defined as paid leave during an emergency due to the worker's illness or other health needs related to the emergency. Again, it does not require the employee to prove that they contracted said illness at the workplace.

Even more onerous is the requirement that employers provide financial assistance for unreimbursed healthcare costs including co-pays, insurance premiums and out of pocket costs for healthcare or transportation. The bill does not define whether these costs are related in any way to the emergency or whether the illness was contracted at the workplace. It is unreasonable for employers to be compelled to pay for healthcare costs for undefined illnesses that are not likely to have been contracted in the workplace. Further, it is not clear that this provision would not also apply to teleworking employees. It appears that the intended result is for employers to pay 100% of insurance premiums and all healthcare costs for all employees, something that just cannot be justified. The cost implications would be devastating to our businesses and nonprofits, who are already struggling with a global pandemic and compounding financial implications of other state mandates, including increased minimum wage and paid sick and safe leave.

Our member businesses and nonprofits are frantically struggling to keep their doors open and keep their livelihoods. Many consider their employees like family and have worked mightily to keep them employed or help them through this crisis. Still, thousands of businesses have and will close their doors permanently due to the pandemic. The State should be looking for ways to save these businesses instead hampering them with unnecessary regulations and opening them up to potential frivolous litigation. More regulation equals more liability. Businesses need help and protections not overburdensome and costly regulations.

For these reasons, the Greater Silver Spring Chamber of Commerce respectfully requests an **UNFAVORABLE committee report on SB 486**.

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