Testimony offered on behalf of:
THE HUBZONE CONTRACTORS NATIONAL COUNCIL

UNFAVORABLE:

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

Senate Finance Committee
2/11/2021 at 1:00 PM

On behalf of the 415 SBA certified HUBZone small business firms in Maryland, and the 17, 410 Maryland small businesses in the federal marketplace, the HUBZone Contractors National Council (The Council) wants to express our **opposition to SB 486 - Labor and Employment – Employment Standards During an Emergency (Maryland Essential Workers' Protection Act).**

Senate Bill 486 would implement additional regulations on employers in cases of emergency or when under Executive Order. It defines essential workers, requires an employer to provide a supplementary $3.00 per hour in hazard pay for essential workers, requires more occupational safety and health procedures during an emergency, allows an essential worker to refuse to fulfill a certain responsibility, prohibits an employer from retaliating or taking other adverse action against an essential worker for refusing to fulfill his/her responsibility, requires employers to provide financial assistance for unreimbursed health care costs, and creates a new mandated paid bereavement and sick leave program.

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. We believe that the definition of "emergency" needs to be narrowed, refined, and made more objective.

The definition of essential worker is too broad and encompasses most employers in Maryland, including a large portion of small businesses. The bill goes well beyond the scope of the public health emergency we are currently navigating as a result of COVID-19. 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.

All employers want to provide a safe environment for their workers and this legislation is unwarranted.

Most 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. This is an appalling notion and undue expenses like these are egregious.

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"? The examples provided are inconsistent with the definition. Unsanitary conditions do not render an employee unable to work, for example. 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 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.

Allowing employees to refuse to go to work is ludicrous, especially when precautions are being taken to protect the employees. 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 people would rather sit at home and collect unemployment while thousands of jobs go unfilled and businesses reduce hours, products, and services because they are 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.

Creating a new program just for a health emergency is 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.

Furthermore, employers are struggling to keep their doors open. 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 of hampering them with unnecessary regulations and opening them up to potential frivolous litigation. More regulations equals more liability. Businesses need help and protections not over burdensome and costly regulations.

The Council respectfully requests an **UNFAVORABLE Committee** report on SB 486—Labor and Employment - Employment Standards During an Emergency (Maryland Essential Workers' Protection Act).

Sincerely,

The HUBZone Contractors National Council