

BOARD MEETING:
2ND AND 4TH TUESDAY OF EACH MONTH

(410) 226-5122



101 Market Street
P.O. Box 339
Oxford, Maryland 21654

Commissioners of Oxford

February 9, 2021

Senator Delores G. Kelley, Chair
Finance Committee
Miller Senate Office Building
3 East
Annapolis, Maryland 21401

**Re: Senate Bill 486 – Labor and Employment – Employment Standards During an
Emergency (Maryland Essential Workers’ Protection Act)**

Chair Kelley,

Please accept this letter as written testimony in opposition to Senate Bill 486 as written as it is overly broad and will have considerable ramifications on all essential employers, but particularly local governments and small businesses. While the Commissioners of Oxford appreciate the intent behind Senate Bill 486 and recognize that many frontline workers have suffered grave consequences as a result of COVID-19, they cannot support legislation that is so overly broad that the impacts of the bill are more detrimental than they are beneficial. Rather than provide an exhaustive overview of the bill, this letter is meant to discuss the major areas of concern within the bill and provide a list of questions that the Town expects will arise from this bill, and which show how ambiguous the text of the bill is.

There are several areas of concern within the bill that the Town cannot support. The first concern stems from the definitions of “essential employer” and “essential worker” which are so broad they encompass every employee that has reported to a worksite since the pandemic began in March 2020, regardless of whether the employee had an increased risk of exposure by reporting. There are many instances where employees have been able to report to a worksite and complete their duties alone, without the heightened risk of exposure. There are also instances where an employee has the ability to perform work remotely but choose not to, or find that they are able to be more productive at the worksite rather than working remotely. Should an employer be subject to this bill if their employee determines, on their own, that they are not able to work remotely? It seems more appropriate to define essential employee as one that is at a heightened risk of direct exposure, and not one that may be reporting to a solo office.

The second concern is the blanket application of the \$3.00 per hour raise. Wouldn’t it be more practical and fair-minded to tier the raise depending on the level of the employee’s exposure? As drafted, the bill provides a \$3.00 per hour raise to a healthcare employee working in a hospital directly exposed to the emergency at hand and an employee of another trade that may report to a worksite where they are the only employee. What kind of example is being set by telling frontline workers that they should receive the same raise as an employee with very limited, or potentially no exposure?

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There is also much confusion as to whether the bill mandates retroactive payment by employers to essential employees. During the hearing on House Bill 581 in the Economic Matters Committee on February 5th, which was cross-filed with Senate Bill 486, many delegates testified that the bill is not intended to apply retroactively. However, § 3-1609(A)(2) as proposed states, “[a]n essential worker is eligible for hazard pay dating back to the start of the emergency.” This would mandate all essential employers, many of which did all they could to keep their entire staff, or a majority of their staff, on the payroll during the pandemic to shell out exorbitant amounts of money to retroactively pay those employees. Many employers, including the Town of Oxford, operate on an annual budget and are already facing severe budget shortfalls from the pandemic. While the Town of Oxford has less than 15 employees, a \$3.00/hour retroactive increase per essential employee would cost the town over \$60,000, which was not budgeted for and could be determined as an unconstitutional ex post facto law. Have the legislators considered where the funds to cover retroactive payment will come from? Or that it may require some businesses to declare bankruptcy or shutdown?

The bill also fails to consider that some essential employers already provided their essential employees with pay increases or increased hours during the pandemic. For instance, many employers continued to pay their employees for a 40-hour workweek during the pandemic but operated on reduced hours. Others gave employees bonuses and additional overtime they would not have otherwise received. To now require the employer to pay an additional hourly rate without consideration of whether the employer already provided a pandemic-specific benefit is irresponsible and will prevent employers from providing work benefits in the future.

Aside from the hourly pay increase that, as written, applies to all essential employees whether they are on the frontline or working in a storage room alone, it will also be extremely expensive for employers to cover medical expenses as a result of a covid-19 sickness or injury. The biggest heartburn with this requirement that many employers and health departments have struggled with is that it is nearly impossible to trace covid-19 exposure to the employer, or the site of exposure. The language in the bill requires an essential employer to cover health care costs of an employee that becomes ill due to covid-19 exposure regardless of whether the employee was exposed while on duty.

As written, the bill permits an employee to act irresponsibly while off duty to the detriment of the employer. While an employer can regulate the conduct of its employees while they are on duty, it certainly lacks the ability to regulate conduct while off the clock. If this bill goes forward, the Town urges this Committee to consider adding a provision that an essential employer is required to provide financial assistance and additional leave to an essential employee that was exposed, or likely exposed, while on duty with some threshold of establishing where the exposure occurred. Anything else would be unduly burdensome and act as a punishment to all essential employers.

While the Town understands that some essential employers did not provide their employees with the respect and compensation they deserved, a majority of essential employers did and should not be penalized for the downfalls of those that fell short. We cannot recover from this pandemic and continue to support our economy by penalizing essential employers

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without regard to the number of employees the employer employs, the particular industry, the risk of exposure, and many other factors which are not considered within the bill.

Although the major concerns with the bill are stated above, the following questions shed light on how overly broad and ambiguous the bill is, which will cause harm and provide little benefit.

- Shouldn't consideration be given to employers that establish policies to permit employees to work alone?
- Should the bill consider a threshold of application so that an employer has to employ at least 15 employees to apply? Otherwise, this bill applies to a small business that has one or two employees with no risk of exposure.
- Have legislators considered the expense of preparing a health emergency preparedness plan? Will the state provide a template plan?
- Regarding section 3-1607(A), how can we expect an employer to determine that the infection was contracted at the worksite? Contact tracing is extremely difficult.
- Does section 3-1607(A)(2) require evacuation of the entire office/department, or only the site where the positive employee worked? For instance, in an office that has multiple departments, the language of the bill seems to contemplate the evacuation of the entire office, and not only those exposed.
- Section 3-1604(2) requires an employer to provide the necessary amount of personal protective equipment. What will happen in the situation which occurred in the beginning of the pandemic when personal protective equipment was not available? Should an employer be penalized when obtaining PPE is out of their control?

The Town of Oxford urges you to consider the above questions and deny Senate Bill 486 as too broad and unduly burdensome. Conversely, the Town urges you to revise the Bill to address the questions and concerns above.

Conclusion

The Town appreciates your consideration of this letter in opposition to Senate Bill 486 as it is overly broad and unduly burdensome. The Town hopes that you consider the grave ramifications this bill will have on local governments and the local economy who struggled to remain open during the pandemic and continue to pay their employees. The Town strongly believes that Senate Bill 486 will have a negative impact for the small town of Oxford and all municipalities and small businesses within the state. Our businesses need support during this time, not punishment.

On behalf the Commissioners of Oxford,



Cheryl Lewis, Town Administrator