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Date: February 9, 2021
To: Members of the Senate Finance Committee
From: Holly Porter, Executive Director
Re: SB 486– Labor and Employment – Employment Standards During an Emergency (Maryland Essential Workers’ Protection Act) - **UNFAVORABLE**

Delmarva Chicken Association (formerly Delmarva Poultry Industry, Inc.), the 1,600-member trade association representing the meat-chicken growers, processing companies and allied business members on the Eastern Shore of Maryland, the Eastern Shore of Virginia, and Delaware strongly opposes SB 486 and urges an unfavorable committee report.

SB 486 would create a number of new programs and mandates for employers based on new definitions of essential employers and would significantly increase costs to these employers. Some of the provisions of the bill include an additional \$3/hour of hazard pay, retroactive to the start of the emergency, employer reimbursement for healthcare costs, new leave program for bereavement and health leave, employee right to refuse work, workplace safety standards and health emergency preparedness plans.

DCA’s membership of chicken growers, chicken processing plants and allied businesses, most of whom were considered essential during this pandemic, have stepped up significantly in prioritizing their employees, while still providing the food that is on our plates each day. To be clear, this bill would have economic impacts on all of our members.

While the processing companies did have reported outbreaks early in the spring when most people were still trying to understand this novel virus and guidance was rapidly changing, those outbreaks have not occurred throughout the fall and winter, when community spread has continued to rise. This is just a small testament to all the efforts that the companies have taken in protecting employees (see Page 4 for specific measures). Efforts that have cost the companies millions of dollars. And even with the outbreaks, it has never been clear where the virus may have been contracted – at the workplace, home, or local grocery store.

This bill seems to disregard those measures and instead broadly defines emergency, essential employers and essential employees and adds so many additional expenses and programs, it would be almost impossible for some small businesses, including farmers, to comply without major economic impacts. And all of this would be on top of other state mandates that are already being budgeted for, including increased minimum wage and paid sick leave.

Maryland’s chicken community very much recognizes that in order to stay in business, employee health and safety must be a priority. And we continued to step up and keep working and providing Maryland citizens with much needed food, even with shortages around the state. This bill feels as almost a punishment for those employers who continued to feed all of us.



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In specific, we have major concerns with the following provisions:

Hazard Pay

The provision requiring employers to provide hazard pay for each pay period that the essential worker works at \$3/hour could devastate many businesses. Keep in mind we are still very much in the middle of a state of emergency, with no real end in sight.

In just simple calculation, for an employee that has worked 40 hours per week, that is \$480 additional expense for the monthly payroll. If this bill was enacted on March 1, moving forward every essential employer would be required to increase their payroll for an unforeseen amount of time. Even to a small business that may only have 2 – 3 employees, this could quickly add up as it is additional pay beyond the payroll and other benefits. For a large company that employs thousands, you can see how devastating the impact would be. This provision alone would have businesses laying off employees, making it extremely hard to keep producing the food we need. It also may have a negative impact by encouraging employees to actually come to work while they are sick, rather than staying home and not spreading any illness.

Definition of an Emergency

The definition of an “emergency” is broad and goes far beyond the scope of the current pandemic or other public health emergency. Based on this definition, a snowstorm, hurricane, riot in Washington DC (well beyond the Eastern Shore of Maryland) or other any number of other unidentified emergency that could cause for an executive order would impact all employers that are defined as essential.

Definition of Essential Employer/Essential Worker

The definitions of “essential employer” and “essential worker” are overly broad (there is six pages of various sectors or industry types) and do not seem to be tied to any existing federal or state guidance of “essential.” They also do not take into account any risk-profile or threshold depending on the “emergency.” When farmers are caring for animals or working the fields, they are working 24 hours, 365 days a year, whether it’s a holiday or a blizzard.

We are also concerned with the extension of essential worker to also include a contractor or subcontractor who are not employed by the essential employer. This is very often the case within our chicken community where many aspects of the business are driven through contract employment and may expand the number of “essential employees” that fall into the other programs and requirements of this bill.

Working Conditions

This section sets up new, unclear terms of what is working conditions that “reduce physical harm” or “mental distress and detriment.” Mental distress may go far beyond a workplace concern, whether in an emergency or not. For those businesses that require physical labor (use of heavy equipment, working in a chicken house, use of various tools, etc.) what is the definition of ensuring general health and safety of essential worker?



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The bill further requires employers to notify workers of illnesses which “represent a reasonable threat to the essential worker’s health or safety” however there is no definition of such illness and there is concerns that this may conflict with HIPAA.

In addition, the vagueness of an essential worker refusing to fulfill a job responsibility due to fear for life or health during an emergency is extremely concerning. Employers often have to contend with a multitude of reasons that an employee may choose not to work and this could open the door for more issues that may not be substantiated.

Health Emergency Preparedness Plans

Small businesses and chicken farmers (who are small businesses), are extremely concerned about having to prepare “a health emergency preparedness plan for responding to a catastrophic health emergency.” This would require additional time and efforts for employers that may not have the staff to create or annually review and submit changes. Our farmers and businesses are not the experts in preparing plans such as this. And it is not clear why this plan would be submitted to the Maryland Emergency Management Agency and county Emergency Management Director when it is specific to health and/or labor issues. And which illnesses would be required for notifying essential workers of positive test results? The common cold, strep throat?

Infectious Disease Transmission

It is very concerning to require the evacuation of a worksite due to an infectious disease at the worksite. This could include anything from chicken pox to the flu, the common cold to mono and everything in between that is tied to a bacteria, virus, fungi or parasite. And none of this may be directly tied to where the transmission has occurred. The bill would also require the employer to pay the cost of testing for this type of illness, again with no direct tie that the illness had been transmitted due to the workplace.

Bereavement and Health Leave

This additional leave specific to “essential workers” seems to go well beyond the Maryland Healthy Working Families Act, which has provisions to exempt smaller employees, especially our chicken farmers.

And to require an employer to pay health leave, even if there is no indication that the employee is ill due to the workplace. Employers cannot control the action of employees outside of the workplace. So it is unfair to ask small business to pay for sick leave if they are not required under any other law.

For these reasons we have shared, we urge an **unfavorable** vote on SB 486.

Should you have any additional questions, please feel free to contact me at porter@dcachicken.com or 302-222-4069 or Nick Manis, Manis Canning & Associates, 410-263-7882.



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Measures Taken by Chicken Processing Companies to Protect Employees

Administrative Controls

- Implemented travel restrictions and only allowed essential personnel into the plant
- Encourage employees to stay home if they are not feeling well or believe they may have been exposed to the virus, while still receiving pay and no attendance penalty
- Staggered break times throughout the day, where possible.
- Workers naturally stagger in for each shift. Implemented staggered departing times at the end of each shift
- Company medical professionals had been trained on CDC protocols for COVID-19
- Waiving short-term disability waiting periods for employees who contract COVID-19
- Extended hours for onsite wellness centers
- Offered free on-site COVID-19 testing at the plant for all employees – first private companies to offer universal employee testing
- Worked closely with county, state and federal agencies, including site visits by the Centers for Disease Control (CDC) and National Institute of Occupational Safety and Health (NIOSH)
- Each company policy is different, but companies offered paid sick leave, bonus pay, free chicken for employees, made paid time off policies more flexible, and many other ways to show appreciation for workers

Engineering Controls

- Required the use of face masks or face shields, beyond the PPE that is normally worn and provided
- Increased cleaning, sanitation and fogging frequencies and intensities for equipment and common areas at processing facilities, in addition to strict cleaning regulations as a USDA federally inspected facility.
- Increased frequency and locations of hand washing/sanitation for employees
- Practice social distancing not only in common areas, such as break rooms and cafeterias, but also on production lines where possible
- Added outdoor tents/space in order to social distance for breaks
- Where social distancing is not possible on production lines, companies installed plastic dividers between workstations and clean or replace the dividers between shifts
- Increased air exchanged in the facilities and/or added air purifiers

Other Controls

- Created internal teams focused on COVID response
- Heightened employee screening for any signs of illness, including non-contact temperature checks before entering the plant
- Treating worker safety as a non-competitive issue and sharing best practices



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Communications

- Communicated with employees in a variety of languages and including written, verbally, electronic billboards, flyers, and social media on topics including:
 - Proper Hand Hygiene
 - Stop the Spread of Germs
 - What you Should Know about COVID-19 to Protect Yourself and Others
 - Carpooling safety
- Provided employees take-home cleaning supplies as well as information for family members

And to view some of these measures, we encourage you to visit

<https://www.chickencheck.in/blog/chicken-industry-enhanced-safety-measures/> to view a short video produced by the National Chicken Council that shows safety measures inside processing plants, including a Maryland plant.