

MARYLAND JUDICIAL CONFERENCE
OFFICE OF GOVERNMENT RELATIONS

Hon. Mary Ellen Barbera
Chief Judge

580 Taylor Avenue
Annapolis, MD 21401

MEMORANDUM

TO: Senate Finance Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 486
Labor and Employment – Employment Standards During an
Emergency
DATE: January 25, 2021
(2/11)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 486. This bill establishes the Maryland Essential Workers' Protection Act.

The bill is unclear as to whether it applies to the Judiciary. Assuming, arguendo, that it does apply to the Judiciary, it raises separation of power concerns as it impedes the Judiciary's independence. Article IV, §18(b)(1) identifies the Chief Judge of the Court of Appeals as the administrative head of the Maryland Judiciary. The power to administer the Judiciary is not an implied or inherent power but is an express constitutional power of the Chief Judge. This constitutional authority includes managing the Judiciary's personnel.

The Judiciary has its own comprehensive personnel system with policies that address recruitment, supervision, grievances, and termination. The Judiciary is exempt from those aspects of the State Personnel Management System. Indeed, in 1996, as part of the comprehensive personnel reform bill, the General Assembly enacted State Personnel and Pensions Article §2-201, which says "Except as otherwise provided by law, an employee in the Judicial, Legislative, or Executive Branch of State Government is governed by the laws and personnel policies and procedures applicable in that branch." The Judiciary, therefore, submits that the same principle should be applied here: that this legislation should not be applied to the Judiciary.

This bill could also have a substantial operational impact on the Judiciary. Section 3-1604 requires the employer to provide working conditions that "[r]educe physical harm and **mental distress and detriment.**" (Emphasis added). The requirement to reduce mental distress and detriment is an impossible goal to reach as mental distress and detriment is unique to each person. There is no single standard that could be applied. This imposes

operational requirements that are difficult, if not impossible, to meet. There are fines and penalties imposed if the requirements are not met. Further, section 3-1605 (A) (1) and (2) define “Unsafe Work Environment.” The definition is somewhat vague, making it difficult for the employer to meet the standard. There are fines and penalties imposed if the requirements are not met.

Section 3-1605 (B) allows a worker to refuse to perform his or her required responsibilities if the worker believes an emergency creates an unsafe work environment and fears for his or her health and safety. The provision puts the discretion on the worker to unilaterally make this determination, potentially leading to an unknown number of workers refusing to work during an emergency and creating an operational hardship for the employer. This could have a significant impact on the Judiciary. Although the health and safety of the public, judges and the Judiciary staff are a top priority, the Judiciary must ensure that its core functions remain available to provide access to justice for all citizens. This provision could substantially impede this access if courts cannot operate as needed.

Finally, this legislation could have a significant fiscal impact on the Judiciary. This cost has not been budgeted by the Judiciary.

cc. Hon. Malcolm Augustine
Judicial Council
Legislative Committee
Kelley O’Connor