

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 162
Finance

(Senator Kelley, *et al.*)

Labor and Employment - Work Hours

This bill prohibits an employer from requiring or allowing certain employees to work for more than five consecutive hours within a calendar day without a nonworking period of at least one-half hour. An employer who violates the bill's provisions is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$100.

Fiscal Summary

State Effect: State agencies with employees covered by collective bargaining agreements may experience operational impacts. The impact will vary by agency and will likely be significant for a few. Potential minimal increase in general fund revenues due to the bill's penalty provision.

Local Effect: Potential significant operational impact for some local governments. The impact will vary by jurisdiction. Potential minimal increase in revenues due to the bill's penalty provision. **This bill may pose a mandate on a unit of local government.**

Small Business Effect: None. Most small businesses do not engage in collective bargaining and, therefore, their employees would be exempt.

Analysis

Bill Summary: The bill defines an employer as a person engaged in a business, industry, profession, trade, or other enterprise in the State, as well as State, local, and municipal governments. The bill does not apply to an employee who: (1) is not covered by a collective bargaining agreement; (2) as the primary duty of the employee, manager, an enterprise or unit of the enterprise that customarily is considered a department or

subdivision of the enterprise; (3) customarily and regularly supervises at least two employees; (4) customarily and regularly exercises discretionary powers; and (5) may hire or fire another employee or makes recommendations that affect another employee's hiring, advancement, firing, or any other change in status of another employee. It also does not apply to an employee whose primary duty is to work in a field that requires advanced knowledge that is customarily acquired by a prolonged course of specialized instruction and study.

Current Law: State law does not allow a minor ages 14 and 15 to work more than five consecutive hours without a nonworking period of at least 30 minutes. No such provision applies to private or public sector employees over the age of 16. Federal law (the Fair Labor Standards Act) does not require lunch or coffee breaks. However, when employers do offer short breaks (usually lasting about five to 20 minutes), federal law considers the breaks work-time that must be paid. Meal periods that typically last at least 30 minutes are not required to be compensable.

The Memoranda of Understanding (MOU) between State employees and the Department of Budget and Management (DBM) outlines standard workweek hours and overtime pay requirements but does not specify when breaks should be allowed.

State Revenues: General fund revenues could increase as result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: There are 34,924 Executive Branch employees who belong to collective bargaining units and are covered by an MOU; a portion of them are management or highly trained technical employees who would not be eligible for the nonworking break required by the bill. Legislative and Judicial Branch employers would also not be eligible because they are not covered by collective bargaining agreements. The bill is silent on whether the break constitutes paid time.

DBM advises that most State agencies provide employees with a nonworking break and, therefore, little or no operational impact is expected. However, this is not always the case for agencies such as the Department of Public Safety and Correctional Services and the Department of Health and Mental Hygiene (DHMH) where employees do not always work traditional office hours. For instance, DHMH indicates that the bill would affect health care workers and security personnel who belong to collective bargaining units. Nurses and other health professionals who work an 11 p.m. to 7 a.m. shift without a guaranteed break would be required to stay until 7:30 a.m. under the bill.

The Maryland Department of Transportation advises that the bill would not have a significant impact as bargaining unit employees in the Maryland Transit Administration are provided a break that complies with the bill's requirements.

Local Revenues: Revenues could increase minimally under the bill's monetary penalty provision for those cases heard in the circuit courts.

Local Expenditures: The cities and counties that responded to a request for information indicated different impacts. Howard County advised that their bargaining employees typically take a break after four or five hours but may be asked to work up to eight consecutive hours for emergencies such as snowstorms. It estimates that it would cost \$2,540 per day to comply with the bill during such emergencies, assuming they are paid for the extra time. Caroline County observed that it could incur legal costs associated with defending against an accusation that it violated the terms of the bill.

The towns of Thurmont and Elkton and Calvert County advised that the bill had no impact because they do not have employees who belong to collective bargaining units. Montgomery County also said it would have no impact.

Additional Comments: If the bill applied to employees not covered by a collective bargaining agreement, it would have a meaningful operational and/or fiscal impact on the private sector, particularly small businesses such as retail and service shops that typically only have a few employees. Of the estimated 106,900 firms in Maryland (according to 2001 Census data), approximately 17% or 18,760 have five to nine employees.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Town of Elkton; Town of Thurmont; Montgomery County; Caroline County; Calvert County; Howard County; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; U.S. Department of Labor; Department of Budget and Management; Department of Legislative Services

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