

Department of Legislative Services  
 Maryland General Assembly  
 2005 Session

FISCAL AND POLICY NOTE

House Bill 63 (Delegate Murray)  
 Economic Matters

Labor and Employment - Vacation Leave - Compensation

This bill requires an employer to provide compensation, at the employee’s regular rate of pay, for any unused or accumulated vacation leave upon its expiration.

Fiscal Summary

**State Effect:** Significant increase in general, special, and federal fund expenditures to compensate employees for vacation leave that expires. Total FY 2006 personnel expenditures would increase by at least \$11.7 million. Future year expenditures increase with growth in salary costs. Revenues would not be directly affected.

(\$ in millions)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	7.0	7.2	7.5	7.9	8.2
SF Expenditure	2.3	2.4	2.5	2.6	2.7
FF Expenditure	2.3	2.4	2.5	2.6	2.7
Net Effect	(\$11.7)	(\$12.0)	(\$12.5)	(\$13.1)	(\$13.7)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Potential significant increase in county and municipal expenditures to compensate employees for vacation leave that expires. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful impact on small business.

## Analysis

**Bill Summary:** The bill applies to private industry, local and municipal governments, and State employees not part of the State Personnel Management System (SPMS), that is, part of an independent personnel system.

**Current Law:** The Federal Fair Labor Standards Act does not require the payment of vacation leave for employees, and there are no states that require employers to provide vacation leave. In most states, leave issues such as how much, how it accumulates, how it is used, and how it is forfeited if not used are left entirely to the discretion of the employer.

Several State entities have personnel systems independent of SPMS. The largest independent personnel systems include:

- Judiciary;
- General Assembly;
- University System of Maryland (USM);
- St. Mary's College;
- Morgan State University;
- Baltimore City Community College (BCCC);
- Maryland Department of Transportation (MDOT);
- Maryland Environmental Service (MES); and
- Injured Workers' Insurance Fund (IWIF).

Most State independent personnel systems follow SPMS policies and maintain a maximum of 50 days of annual leave that an employee may carry forward from one year to the next year; MES maintains a maximum carry-forward of 25 days.

**Background:** California requires an employer to compensate an employee for all vacation leave upon termination. Vacation leave is considered wages and vacation time earned, or vested, as labor is performed. An employer that chooses to provide vacation leave to its employees is subject to certain restrictions on how it fulfills its obligation to provide vacation pay. Vacation pay accrues as it is earned and cannot be forfeited even upon termination; however, an employer can place a reasonable cap on vacation benefits that prevents an employee from earning more than a certain amount of hours. Upon termination, all earned and unused vacation must be paid to the employee.

In Maryland, the question as to whether an employer must pay an employee for vacation leave upon termination depends on the employer's policies. In the Wage Payment and Collection Law (WPCL), wage means all compensation due an employee and includes any fringe benefit promised in exchange for service. Accrued vacation leave, which accumulates as an employee provides services, is then sometimes viewed as recoverable under WPCL.

Several State agencies, including Legislative Services, use annual leave accrued in excess of the maximum to fund an employee sick leave assistance bank. Forfeited leave in MDOT is either recycled into the State Employee Leave Bank for general use or designated to a particular employee in need through the leave bank.

**State Expenditures:** The bill would significantly increase general, special, and federal salary expenditures to compensate State employees for vacation leave that expires. The bill applies to all State employees that are part of personnel systems independent of the SPMS. The table below provides the estimated cost of compensating employees for lost vacation leave based on the amount of leave lost in calendar 2004.

<u>Department</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
General Assembly	\$195,455	\$198,312	\$207,435	\$216,977	\$226,958
Judiciary	92,138	93,486	97,786	102,284	106,989
MDOT	342,708	463,624	484,951	507,259	530,593
MES	39,859	40,441	42,302	44,247	46,283
IWIF	14,262	14,470	15,136	15,832	16,560
USM	10,538,954	10,693,034	11,184,913	11,699,419	12,237,592
BCCC	39,702	40,283	42,136	44,074	46,102
Morgan State	321,468	326,168	341,172	356,865	373,281
St. Mary's College	<u>97,589</u>	<u>99,015</u>	<u>103,570</u>	<u>108,334</u>	<u>113,318</u>
<b>Total</b>	<b>\$11,682,135</b>	<b>\$11,968,833</b>	<b>\$12,519,401</b>	<b>\$13,095,291</b>	<b>\$13,697,676</b>

The above table is an estimate of the minimum cost as it is likely that employees would change their actions in taking vacation leave. Often when an employee is notified in advance of the amount of leave to be lost in a calendar year, the employee will schedule leave they otherwise would not have taken. This bill would likely change that process and costs would increase considerably from the estimate.

**Local Expenditures:** County and municipal expenditures could increase significantly as a result of this bill depending on the local government's current leave policies. Based on a sampling of local governments by Legislative Services, the impacts were varied as shown below.

<u>Local Government</u>	<u>Leave Policy</u>	<u>Effect of Bill</u>
Kent County	cap of 50 days	minimal
Montgomery County	annual leave above cap is converted to sick leave	potentially none
Prince George's County	same as above	potentially none
Washington County	cap of 25 days	minimal – few employees lose leave
Worcester County	cap of 45 days	fiscal 2006 – \$42,500
City of College Park	cap of 45 days	minimal
City of Frostburg	cap of 10 days	\$15,000 to \$20,000
Town of Berlin	cap of 30 days	minimal
City of Rockville	cap of 50 days	3 employees lost leave in 2004

Regarding Montgomery and Prince George's counties, it is unclear how this bill would apply to their policy of converting excess vacation leave to sick leave. It is assumed that converting vacation leave to sick leave would not be considered an expiration of vacation leave.

**Small Business Effect:** To the extent that small business vacation leave policies remain constant, this bill could have a meaningful impact. A small business would be required to compensate an employee for vacation leave upon its expiration. Small business, with usual limited resources, is more likely to limit an employee's use or accrual of vacation time than governments. While most governments allow generous carry-forward policies many small business do not allow employees to carry forward any vacation leave. Therefore, this bill could more significantly impact small business than governments.

According to 2001 U.S. Census Bureau small business information, small businesses in Maryland employed 604,373 individuals with a total payroll of \$19,070,641.

**Additional Comments:** This bill would likely change behaviors on both an employee's and employer's part. An employee may take less frequent vacation during the year in order to receive monetary compensation while an employer would likely change its leave policies to minimize the financial impact on their company.

It is unclear if this bill would apply to accrued compensatory leave policies.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Town of Berlin; City of Rockville; City of Frostburg; City of College Park; Washington County; Montgomery County; Prince George's County; Kent County; Worcester County; Town of Bladensburg; Department of Labor, Licensing, and Regulation; Department of Budget and Management; Department of Legislative Services

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