

Department of Legislative Services  
 Maryland General Assembly  
 2007 Session

FISCAL AND POLICY NOTE

House Bill 1390 (Delegate Feldman, *et al.*)  
 Economic Matters

Employment Standards - Payment of Overtime - Computation

This bill requires overtime to be calculated based on the greater of each hour over eight hours that an employee works during a workday or each hour over 40 hours that an employee works during a workweek.

Provisions do not apply to certain exempted employees, including those covered by a collective bargaining agreement that provides for overtime compensation. The bill also does not apply to employees who establish an agreement with their employer to work four 10-hour days in one workweek.

Fiscal Summary

**State Effect:** If the bill is construed to apply to the State as an employer, there would be a potential meaningful increase in overtime expenditures to compensate eligible employees. General fund expenditures would also increase by an estimated \$201,900 in FY 2008 for investigation and enforcement by the Department of Labor, Licensing, and Regulation. Out-years reflect annualization and inflation. Revenues would not be affected.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	201,900	254,800	268,100	282,200	297,200
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$201,900)	(\$254,800)	(\$268,100)	(\$282,200)	(\$297,200)

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

**Local Effect:** If the bill is construed to apply to local governments as employers, there would be a potential meaningful increase in overtime expenditures to compensate eligible employees. *This bill may impose a mandate on a unit of local government.*

**Small Business Effect:** Potential meaningful.

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## Analysis

**Current Law:** The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act of 1938. State law sets minimum wage standards with the purpose of providing a maintenance level consistent with the needs of the population for their efficiency, general well-being, and health.

Under Maryland Wage and Hour Law, employers, including governmental units, are generally required to pay each employee the greater of the federal minimum wage (currently \$5.15) or an hourly wage of \$6.15. Exceptions exist for training wages and disabled employees of a sheltered workshop.

Employers are required to pay an overtime wage of at least 1.5 times the usual hourly wage. This requirement does not apply to an employer that is subject to federal rail laws; a hotel or motel; a restaurant; a gasoline service station; a bona fide private country club; a nonprofit entity primarily engaged in providing temporary at-home care services; a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or specified amusement or recreational establishments. It also does not apply to an employee for whom the U.S. Secretary of Transportation sets qualifications and maximum hours of service under federal law; a mechanic, partsperson, or salesperson, under certain conditions; or drivers employed by a taxicab operator.

An employer is required to compute the wage for overtime on the basis of each hour over 40 hours that an employee works during one workweek. Specific exemptions apply for farm work, bowling establishments, and infirmaries.

Maryland Wage and Hour Law does not apply to certain categories of employees, including those defined as administrative, executive, or professional; certain seasonal employees; part-time employees younger than 16 or older than 61; salesmen and those who work on commission; an employer's immediate family; movie theater employees; employees training in a special education program in a public school; employees of an establishment that sells food and drink for on-premises consumption; and certain farm workers.

**Background:** The bill establishes two scenarios under which an eligible employee would earn overtime compensation. Compensation would be calculated based under the scenario that produces the greater number of overtime hours.

#### *Scenario One*

If an employee works more than 8 hours per day but fewer than 40 hours during the workweek, that employee would be eligible for overtime. For example, an employee would earn 6 hours of overtime pay if he were to work three 10-hour days during one workweek. Under current law, this employee would not be eligible for overtime pay.

#### *Scenario Two*

If an employee works more than 40 hours during the workweek, that employee would be eligible for overtime. For example, an employee would earn two hours of overtime pay if she were to work seven hours each of six days during one workweek. This scenario is consistent with current law.

According to the terms of the bill, employees who establish a flex-time agreement with their employers to work four 10-hour days per workweek would not qualify for compensation under the first scenario. In addition, the bill would not apply to an employee covered by a collective bargaining agreement that provides for overtime compensation. With these exceptions, the bill does not alter an employee's eligibility for overtime pay, but does change the basis for calculating overtime hours.

**State Expenditures:** The bill does not specify whether it applies to State and local governments as employers and could be construed either way. If the bill is construed to apply to the State as an employer, overtime expenditures would increase to reflect the expanded circumstances in which an employee is entitled to overtime pay. The amount of the increase could be potentially significant, but cannot be reliably determined at this time. Agencies contacted for this fiscal note advise that there would be some modification of work schedules to minimize overtime expenditures, if applicable.

#### *Investigation and Enforcement*

The bill would also increase general fund expenditures for investigations and enforcement of State law. Overtime complaints are currently handled by the U.S. Department of Labor's Employment Standards Service, as State overtime requirements reflect the requirements of the federal Fair Labor Standards Act. Modifying the calculation of overtime pay would require enforcement by State government.

Based on the number of federal wage and hour cases, the Department of Labor, Licensing, and Regulation estimates that this bill could result in 178 State cases involving 3,024 employees. The department estimates that this volume of activity would result in 6,465 additional work hours, equivalent to three new wage and hour investigators, as well as related counsel and administrative support staff. If staff requirements exceed these estimates, the department could request additional positions through the budget process.

General fund expenditures could increase by an estimated \$201,903 in fiscal 2008, which accounts for the bill's October 1, 2007 effective date. This estimate reflects the cost of hiring three investigators, one assistant Attorney General, and one clerical position to investigate and enforce overtime standards. It includes salaries, benefits, one-time start-up costs, and ongoing operating expenses.

Positions	5
Salaries and Fringe Benefits	\$173,253
Operating Expenses	<u>28,650</u>
<b>Total FY 2008 State Expenditures</b>	<b>\$201,903</b>

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increase in ongoing operating expenses.

**Local Expenditures:** To the extent that the bill applies to local governments as employers, expenditures could increase to compensate eligible employees.

**Small Business Effect:** To the extent that eligible employees of small business qualify for additional overtime pay, expenditures would increase for these businesses.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Business and Economic Development; Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Department of Budget and Management; Department of Legislative Services

**Fiscal Note History:** First Reader - March 21, 2007  
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