HB 1235

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1235 (Delegate Feldman, *et al.*)
Economic Matters

Maryland Wage and Hour Law - Payment of Overtime - Exemptions

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This bill requires overtime to be calculated based on the greater of • each hour over eight hours that an employee works during a workday; and • each hour over 40 hours that an employee works during a work week, with specified exceptions.

Fiscal Summary

State Effect: General fund expenditures could increase by $222,800 in FY 2009 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 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	$0	$0	$0	$0	$0
GF Expenditure	222,800	282,500	296,500	311,200	326,700
Net Effect	($222,800)	($282,500)	($296,500)	($311,200)	($326,700)

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

Local Effect: None.

Small Business Effect: Potential meaningful; to the extent that eligible employees qualify for additional overtime pay, expenditures would increase.

Analysis

Bill Summary: The bill adds another component to the calculation of overtime pay, requiring an employer to compensate an employee at 1.5 times the usual hourly rate for each hour over eight hours in a workday when that amount is greater than the amount of overtime an employee would otherwise earn under a traditional 40-hour workweek calculation.

Provisions do not apply to certain employees, including those under written agreement to earn overtime pay at a rate greater than 1.5 times the usual hourly wage. The bill also does not apply to employees whose employer is licensed by a State agency • to provide services for individuals with disabilities; • as a private mental health facility; • as a child care home; • as a child care institution; or • as a private residential rehabilitative institution. Furthermore, the bill does not apply to employees who establish an agreement with their employer to work a 40-hour week in fewer than five calendar days.

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 $5.85) 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 age 16 or older than age 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 six 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 would not qualify for compensation under the first scenario. In addition, the bill would not apply to employees covered by a collective bargaining or other agreement that provides for overtime compensation at a rate greater than 1.5 times the employee's usual hourly pay. Certain direct care service providers are also exempted. 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 would 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 nearly 200 State cases involving approximately 3,000 employees. The department estimates that this volume of activity would result in 6,500 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 $222,810 in fiscal 2009, which accounts for the bill's October 1, 2008 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	$194,160
Operating Expenses	28,650
Total FY 2008 State Expenditures	**$222,810**

Future year expenditures reflect • full salaries with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses.

Additional Comments: Unless specifically included, State and local governments are generally exempted from statutory requirements. As written, it is assumed that this bill would not impact State or local government expenditures as employers.

Additional Information

Prior Introductions: A similar bill was introduced during the 2007 session as HB 1390. The House Economic Matters Committee did not take action on the bill.

Cross File: None.

Information Source(s): Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Department of Budget and Management; U.S. Department of Labor; Department of Legislative Services

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