

Department of Legislative Services  
 Maryland General Assembly  
 2009 Session

FISCAL AND POLICY NOTE

House Bill 13 (Delegate Manno)  
 Economic Matters

Workplace Religious Freedom Act

This bill requires employers to allow an employee to use accrued leave to observe a Sabbath, or other holy day, in accordance with a sincerely held religious belief.

Fiscal Summary

**State Effect:** General fund expenditures increase by approximately \$44,300 in FY 2010 due to an anticipated need for additional staff to investigate alleged violations. Future year expenditure estimates reflect annualization and inflation. No effect on revenues.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	44,300	54,200	56,700	59,400	62,200
Net Effect	(\$44,300)	(\$54,200)	(\$56,700)	(\$59,400)	(\$62,200)

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

**Local Effect:** The bill is not expected to materially affect local government operations or revenues.

**Small Business Effect:** Potential minimal. Only small businesses that offer leave in accordance with an employment policy or collective bargaining agreement, and have 15 or more employees, are required to adhere to the provisions of the bill.

Analysis

**Bill Summary:** The bill applies to employers with 15 or more employees who provide leave under a bargaining agreement or employment policy. Employees may only use earned leave in accordance with the terms of the employment policy or collective

bargaining agreement. The bill does not specify application to a unit of State or local government. If an employee has not earned (or is not eligible for) leave with pay, the employer may require the individual to take leave without pay or work additional hours to compensate for the amount of leave requested for religious observance. Employees are not eligible for overtime or other premium wages for time worked to make up for unpaid leave for religious observances.

The bill may not be interpreted to reduce the number of hours that are counted toward the accrual of an employee's seniority, pension, or any premium benefits provided to an employee under the terms of a collective bargaining agreement.

Employers may be exempted from this legislation if they can prove that compliance with the requirements causes an undue hardship. The bill defines an undue hardship as an accommodation that results in interference with the safe or efficient operation of the workplace, an unreasonable expense for the employer, or a violation of an established seniority system or collective bargaining agreement. The Commissioner of Labor and Industry makes the determination of hardship based on several criteria, including loss of productivity and personnel management difficulties resulting from compliance with the bill.

An employer is prohibited from disciplining, demoting, discharging, or suspending an employee who exercises rights granted in this bill. Employees may bring civil action in circuit court against an employer who violates these provisions, but they must do so within 90 days of the alleged violation. If successful, they may be awarded back pay, legal fees, and court costs.

The bill grants the commissioner the authority to conduct an investigation upon receipt of a written complaint from an employee.

**Current Law:** Employers may not discharge, refuse to hire, or deprive individuals of employment opportunities based on race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability.

An employee in a retail establishment may choose a day of rest unless the employee is a managerial, professional, or part-time employee. Wicomico County permits part-time employees to choose a day of rest. Employees who desire a day of rest must provide employers with written notice; while employed, the individual may change the day of rest by giving written notice to the employer at least 30 days prior to its effective date. If an employer compels an employee to work on his or her day of rest, the employee is entitled to bring civil action against the employer to recover three times the regular rate of pay for the hours worked on that day.

Employers may not discharge, discipline, discriminate against, or otherwise penalize an employee who chooses a day of rest or require an applicant who seeks a work week of at least 25 hours to answer any question that identifies the applicant's desired day of rest.

An employer who violates the day of rest provisions is guilty of a misdemeanor and is subject to a fine of between \$250 and \$500. In Wicomico County, offenders are fined \$500 for the first offense and \$1,000 for each subsequent offense.

**Background:** Title VII of the federal Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. The Civil Rights Act establishes that employers must accommodate an employee's religious practice, observance, and belief unless it poses an undue hardship on the conduct of the employer's business.

Many states, including Maryland, have codified anti-discrimination language similar to Title VII of the Civil Rights Act. However, only New York has a law that establishes employee rights regarding religious freedom to the same extent as the proposed legislation. California, New Jersey, South Carolina, and the District of Columbia have legislation that includes some components of the bill, but these laws are largely dissimilar.

The U.S. Congress has considered several introductions of a bill titled the "Workplace Religious Freedom Act." If enacted, that legislation requires employers to make a reasonable accommodation for an employee's religious practice, such as wearing a beard or religious clothing, or the observance of holy days. Proponents assert that the legislation is necessary to ensure that employees are free to worship without compromising their employment. Opponents argue that the provisions require companies to provide accommodation to some employees while unfairly burdening others.

The proposed federal legislation also establishes tests to clarify the terms "reasonable accommodation" and "undue hardship"; the proposed bill states that employers must accommodate employees unless it means a "significant difficulty or expense." In *Trans World Airlines vs. Hardison* (1977) the Supreme Court defined "undue hardship" as anything more than *de minimis* cost.

**State Fiscal Effect:** The Department of Labor, Licensing, and Regulation (DLLR) advises that it anticipates receiving about 100 complaints per year as a result of this legislation. The agency's investigators are required to conduct on-site investigations, prepare reports, and, upon filing, testify in court proceedings. DLLR advises that it can not handle this additional workload with existing resources and needs one additional staff member in order to meet the requirements of the bill.

General fund expenditures increase by \$44,314 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date. This estimate reflects the cost of hiring a wage and hour investigator to follow up on claims of violations related to the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$35,728
Additional Equipment and Supplies	8,586
<b>Total FY 2010 State Expenditures</b>	<b>\$44,314</b>

Future year expenditures reflect a full salary with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City; Calvert, Howard, and Montgomery counties; Maryland Chamber of Commerce; Department of Budget and Management; Human Relations Commission; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 1, 2009

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