

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 16 (Delegate Manno)
Economic Matters

Labor and Employment - Shift Breaks

This bill requires an employer to provide a nonworking shift break to each employee who works at least four consecutive hours, subject to specified criteria and some exceptions.

“Employer” includes the State and a unit of State government. Requirements do not apply to units of local government, employers with fewer than 50 employees, or employees covered by collective bargaining agreements or employment policies that provide equal or greater shift break allowances. The Commissioner of Labor and Industry may exempt certain employers from the provisions of this bill based on criteria specified in regulations.

Fiscal Summary

State Effect: Potential increase in State expenditures (all funds) due to the bill’s requirements and remediation provisions. Potential minimal increase in general fund expenditures due to partial State funding of circuit courts. No effect on revenues.

Local Effect: Potential increase in circuit court expenditures due to the bill’s remediation provisions.

Small Business Effect: None.

Analysis

Bill Summary: An employee may not work between four and six consecutive hours without a nonworking shift break of at least 15 minutes. Likewise, an employee may not work more than six consecutive hours without a nonworking shift break of at least

30 minutes. If, however, an employee works six consecutive hours or less, the requirement to provide a nonworking shift break may be waived by written agreement.

A required shift break may be considered a working shift break if the type of work prevents an employee from being relieved of his or her duties or the employee is allowed to consume a meal while working and the time is counted toward the employee's work hours. In either case, the employer and employee must agree in writing to this arrangement.

An employer may not be required to provide a nonworking or working shift break if there is an emergency that poses an immediate threat to public health or safety.

An employee may bring a civil action in circuit court against an employer who fails to comply with provisions for shift breaks. An employee who prevails in an enforcement action must be awarded reasonable attorney's fees and costs and is entitled to back pay and/or injunctive relief.

Nonworking shift break requirements do not apply to persons licensed by the Developmental Disabilities Administration, Mental Hygiene Administration, Department of Human Resources, or Department of Juvenile Services.

Current Law: The Fair Labor Standards Act does not require that breaks or meal periods be given to workers. However, when employers do offer short breaks (usually lasting 5 to 20 minutes), federal law considers the breaks as compensable work hours that are included in the sum of hours worked during the work week and considered in determining if overtime was worked.

The U.S. Department of Labor advises that bona fide meal periods (typically lasting at least 30 minutes) serve a different purpose than coffee or snack breaks and are not compensable work time. Federal regulations require that an employee be completely relieved from duty for the purposes of eating regular meals.

Maryland law does not specifically provide for a meal period for adults, but individuals younger than 18 may not be employed for more than five consecutive hours without a nonworking period of at least one-half hour.

Background: Nineteen states have established minimum length of meal requirements for adults. These requirements generally allow for a one half-hour meal period for employees who work a prescribed length of time. Several states require the meal period to be provided within a specific period of time during an employee's shift.

State Fiscal Effect: According to the Department of Budget and Management, most State employees have a standard work day which includes a 30- to 60-minute meal period, and State employees already have a grievance process to address disputes related to a personnel policy or regulation. However, allowing an employee to go directly to circuit court and requiring awards for attorney's fees and costs to a prevailing employee may encourage litigation. The fiscal impact of any such litigation is unknown but is expected to be minimal.

Some State agencies may experience significant operational impacts or incur additional costs to ensure coverage. For example, the Motor Vehicle Administration advises that employees are scheduled for four- to five-hour shifts on Saturdays without a scheduled break. On busy days, however, the shifts can run over and exceed six hours, which makes them subject to this bill. Therefore, additional employees may be scheduled for Saturday service to meet the bill's nonworking shift break provisions and avoid customer service disruptions. Thus, special fund expenditures increase minimally.

Although circuit courts are largely locally funded, portions of their operations, such as the cost of the clerks of the court, are State funded. Thus, the Administrative Office of the Courts advises that a significant increase in circuit court filings resulting from the bill increases general fund expenditures.

The Department of Labor, Licensing, and Regulation advises that the bill does not provide administrative authority or enforcement responsibility to the Division of Labor and Industry beyond exempting categories of employers through regulation. Thus, the bill does not materially affect the division's finances or operations.

Additional Information

Prior Introductions: A similar bill, HB 654 of 2008, was heard in the House Economic Matters Committee, but no action was taken on the bill. A similar bill was introduced in the 2007 session as HB 1058/SB 585. HB 1058 was withdrawn after its hearing; SB 585 received an unfavorable report from the Senate Finance Committee.

Cross File: SB 16 (Senator Garagiola, *et al.*) - Finance.

Information Source(s): Baltimore, Charles, Frederick, Montgomery, and Somerset counties; City of Havre de Grace; Maryland Chamber of Commerce; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Office of the Attorney General; University System of Maryland; U.S. Department of Labor; Department of Legislative Services.

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