

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 1249 (Delegate Feldman, *et al.*)
 Economic Matters

Maryland Wage and Hour Law - Payment of Overtime - Exemptions

This bill requires that weekly overtime pay be calculated based on the greater of (1) each hour over eight hours that an employee works during a workday; and (2) each hour over 40 hours that an employee works during a work week, with specified exceptions.

Employers with less than 50 employees are exempted from State overtime standard.

Fiscal Summary

State Effect: General fund expenditures increase by \$250,800 in FY 2010 for investigation and enforcement by the Department of Labor, Licensing, and Regulation (DLLR). Out-years reflect annualization and inflation. Revenues are not affected.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	250,800	313,400	327,900	343,300	359,400
Net Effect	(\$250,800)	(\$313,400)	(\$327,900)	(\$343,300)	(\$359,400)

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

Local Effect: None.

Small Business Effect: None.

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 otherwise earns under a traditional 40-hour workweek calculation.

In addition to the exemptions for employers with fewer than 50 employees, provisions do not apply to:

- employees under written agreement to earn overtime pay at a rate greater than 1.5 times the usual hourly wage;
- employees whose employer is licensed by the Department of Health and Mental Hygiene; the Department of Human Resources; or the Department of Juvenile Services; and
- employees who establish an agreement with their employer to work 40 hours in fewer than 5 calendar days in a scheduled workweek, or 80 hours in fewer than 10 calendar days during two scheduled workweeks.

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 that provide a maintenance level consistent with the needs of the population.

Under the Maryland Wage and Hour Law, employers, including governmental units, are generally required to pay each employee the greater of the federal minimum wage (currently \$6.55 and scheduled to rise to \$7.25 in July 2009) 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 has to compute the wage for overtime on the basis of each hour over 40 hours that an employee works during one work week. Specific exemptions apply for farm work, bowling establishments, and infirmaries.

The 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.

If an employer pays an employee less than the required wage, the employee may bring an action against the employer to recover the difference. At an employee's request, the Commissioner of Labor and Industry may take an assignment of the claim in trust, ask the Attorney General to bring an action, and consolidate two or more claims against an employer. If an employee is entitled to a recovery, the court may direct the employer to pay reasonable counsel fees and other costs, but is not required to do so.

A person who violates Maryland Wage and Hour Law is guilty of a misdemeanor and is subject to a fine of up to \$1,000.

Background: The bill establishes two scenarios under which an eligible employee earns overtime compensation. Compensation is 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 is eligible for overtime. For example, an employee earns 6 hours of overtime pay if he were to work three 10-hour days during one workweek. Under current law, this employee is not eligible for overtime pay.

Scenario Two

If an employee works more than 40 hours during the workweek, that employee is eligible for overtime. For example, an employee earns 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 do not qualify for compensation under the first scenario. In addition, the bill does 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 Fiscal Effect: General fund expenditures increase due to 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 mirror the requirements of the federal Fair Labor Standards Act. Modifying the calculation of overtime pay makes State law different from federal law and requires enforcement by State government.

DLLR advises that seven additional staff may be necessary to implement the bill, with investigators assigned geographically, Legislative Services advises that fewer staff may be needed with broader geographic regions. Thus, three new wage and hour investigators, as well as related counsel, and administrative support staff may be able to handle the increased inquiries, investigative activity, and enforcement of the bill. If staff requirements exceed these estimates, the department may request additional positions through the annual budget process.

General fund expenditures increase by an estimated \$250,793 in fiscal 2010, which accounts for the bill's October 1, 2009 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	\$210,315
Operating Expenses	<u>40,478</u>
Total FY 2010 State Expenditures	\$250,793

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

Additional Comments: Businesses with less than 50 employees are specifically excluded from the scope of the bill. However, employees of these businesses may continue to file claims with the U.S. Department of Labor, instead of the State.

Additional Information

Prior Introductions: A similar bill, HB 1235 of 2008, received a hearing in the House Economic Matters Committee, but no further action was taken.

Cross File: SB 831 (Senator Peters, *et al.*) - Finance.

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

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