

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 381 (Delegates Manno and Rosenberg)
Economic Matters

Workplace Religious Freedom Act

This bill requires employers to allow employees 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 \$43,800 in FY 2011 due to an anticipated need for additional staff to investigate alleged violations. Future year expenditure estimates reflect annualization and inflation. Revenues are not affected.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	43,800	55,000	57,500	60,200	63,100
Net Effect	(\$43,800)	(\$55,000)	(\$57,500)	(\$60,200)	(\$63,100)

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

Local Effect: Potential minimal increase in the number of cases heard in the circuit courts; the additional workload can be handled with existing resources.

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

Analysis

Bill Summary: The bill applies to employers 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.

Employers are prohibited from disciplining, demoting, discharging, or suspending employees who exercise rights granted in the 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 allows 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. The U.S. Congress has considered several introductions of a bill titled the "Workplace Religious Freedom Act." 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 authorized to conduct on-site investigations, prepare reports, and, upon filing, testify in court proceedings. DLLR advises that it cannot 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 \$43,810 in fiscal 2011, which accounts for the bill's October 1, 2010 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	\$36,085
Additional Equipment and Supplies	7,725
Total FY 2010 State Expenditures	\$43,810

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

Additional Information

Prior Introductions: HB 13 of 2009 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Caroline and Montgomery counties; cities of Annapolis, Baltimore, and Bowie; Department of Budget and Management; Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 8, 2010
ncs/mcr

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