

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 1299

(Delegate Manno, *et al.*)

Economic Matters

Finance

Labor and Employment - The Healthy Retail Employee Act

This bill requires employers that operate certain “retail establishments” to offer nonworking shift breaks to their employees.

The bill applies to retail businesses in the State that employ 50 or more retail employees during each working day for 20 or more weeks in the preceding or current year. The employees may be located in one location or in multiple franchised locations that operate under the same trade name. The bill does not apply to wholesale establishments or restaurants or to units of State, county, or municipal governments.

The bill takes effect March 1, 2011.

Fiscal Summary

State Effect: General fund expenditures increase by \$22,000 in FY 2011 for investigation and enforcement by the Department of Labor, Licensing, and Regulation (DLLR). Out-years reflect annualization and inflation. General fund revenues increase minimally each year beginning in FY 2011 due to fines assessed against employers who fail to comply with the bill’s provisions. The Office of Administration Hearings (OAH) can handle the bill’s requirements with existing budgeted resources.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	-	-	-	-	-
GF Expenditure	\$22,000	\$55,300	\$57,800	\$60,500	\$63,400
Net Effect	(\$22,000)	(\$55,300)	(\$57,800)	(\$60,500)	(\$63,400)

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

Local Effect: None. Circuit courts can likely handle any potential increase in litigation with existing resources.

Small Business Effect: None. The bill does not apply to businesses that employ fewer than 50 people.

Analysis

Bill Summary: Shift break requirements do not apply to employees (1) entitled to an equivalent or greater benefit under a collective bargaining agreement or employment policy; (2) who are exempt from overtime pay requirements under the federal Fair Labor Standards Act (FLSA); (3) who work in a corporate office or other office location; or (4) who work for at least four consecutive hours for an employer at a single location with five or fewer employees.

Employees who work between four and six consecutive hours must be offered a nonworking shift break of at least 15 minutes. Employees must be offered a 30-minute break if they work more than six consecutive hours. Employees who work eight consecutive hours in a single shift must be given an additional 15-minute break for every additional four hours worked. If, however, an employee works six consecutive hours or less, the nonworking shift break requirement may be waived by written agreement.

A shift break may be considered a working shift break if (1) the type of work prevents employees from being relieved of their duties; or (2) employees are allowed to consume a meal while working and the break counts toward an employees' work hours. In either case, the employer and employee must mutually agree in writing to this arrangement.

Employees who are denied a shift break as specified by the bill may file a complaint with the Commissioner of Labor and Industry. If the commissioner receives a complaint, the commissioner must try to resolve the issue informally or determine whether the employer has violated the bill's provisions. If the commissioner determines that the employer is in violation of the bill, the commissioner must issue an order compelling compliance. The commissioner may also fine the employer up to \$300 per employee not offered an adequate shift break. Employers who have been in violation within the previous three years may be fined up to \$600 per employee. The commissioner must consider whether or not there was a threat to public health or safety when determining if a violation occurred. When determining the amount of a civil penalty, the commissioner must consider (1) the seriousness of the violation; (2) the size of the employer's business; (3) the employer's good faith in complying with the bill; and (4) any history of violations committed by the employer. An employer may contest the compliance order and assessed civil penalties at OAH.

If an employer fails to comply with the order, the commissioner may bring an action to enforce the order and civil penalties in the appropriate circuit court. If the employer fails

to comply with an order issued for a subsequent violation against an employee within three years of the first complaint, the employee may bring action in circuit court to enforce the order. If an employee prevails in such an action, the employee may be entitled to three times the value of the employee's hourly wage for each shift break violation that occurred after the most recent violation against the employee and reasonable attorney's fees and other costs.

Current Law: FLSA 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 compensable work hours that are included in the sum of hours worked during the work week.

According to the U.S. Department of Labor, *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 persons younger than age 18 may not be employed for more than five consecutive hours without a nonworking period of at least one-half hour.

Certain types of jobs may be completely excluded from coverage under FLSA overtime rules. There are two general types of exclusions. Some jobs are specifically excluded in the statute. For example, movie theater employees and many agricultural workers are not covered by FLSA overtime rules. Another type of exclusion is for jobs that are governed by another federal labor law. As a general rule, if a job is governed by another federal labor law, FLSA does not apply.

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.

DLLR advises that its Employment Standards Service (ESS) received 50,412 phone inquiries in fiscal 2009. DLLR estimates that nearly 20% of these inquiries pertained to nonworking shift breaks. Although inquiries were received from all employment sectors, the majority came from the retail industry.

State Revenues: The bill specifies that the commissioner may fine employers for each employee not offered a shift break if the employer fails to obey a compliance order. The bill requires DLLR to investigate written complaints from employees alleging that an employer failed to offer an adequate nonworking shift break. Legislative Services

estimates that DLLR will receive between 50 and 75 complaints per year from employees regarding the provision of shift breaks by their employers. Depending on the extent to which ESS conducts outreach to retail employers in the State, the number of complaints received annually may be lower.

Legislative Services assumes that DLLR will not impose civil penalties in most cases for a first offense and most employers do not repeatedly violate the bill after receiving a compliance order from the commissioner. If, *for illustrative purposes only*, 10% of complaints result in a fine and the commissioner's average fine is \$300, then general fund revenues increase by between \$1,500 and \$2,100 annually. The amount of fine revenue collected in fiscal 2011 is expected to be lower due to the bill's March 1, 2011 effective date.

State Expenditures: DLLR advises that ESS cannot handle the additional workload created by the bill with existing resources and requires one additional full-time wage and hour investigator to investigate complaints, mediate disputes between employers and employees, and conduct employer outreach. Therefore, general fund expenditures increase by \$21,975 in fiscal 2011 for additional staff and operating expenses; this estimate reflects the bill's March 1, 2011 effective date.

Position	1
Salary and Fringe Benefits	\$15,877
Operating Expenses	<u>6,098</u>
Total FY 2011 State Expenditures	\$21,975

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

OAH anticipates that the bill generates few additional cases per year and advises that such an increase in its workload can be handled with existing resources.

Additional Information

Prior Introductions: Similar bills were introduced in 2007, 2008, and 2009. SB 660 of 2009 was heard in the Senate Finance Committee, but no further action was taken on the bill. HB 16 and HB 651 of 2009 each received an unfavorable report from the House Economic Matters Committee. HB 654 of 2008 was heard in the House Economic Matters Committee, but no further action was taken. SB 585 of 2007 received an unfavorable report from the Senate Finance Committee. Its cross file, HB 1058 received a hearing in the House Economic Matters Committee and was later withdrawn.

Cross File: None designated; however, SB 789 is identical.

Information Source(s): U.S. Department of Labor; Office of Administrative Hearings; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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