

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 127
Economic Matters

(Delegate Davis)

Finance

Labor and Employment - Payment of Overtime Wages

This bill exempts an employer from having to pay overtime wages of at least 1.5 times the usual hourly wage to an employee, unless a collective bargaining agreement between an employer and a labor organization provides otherwise, if (1) the employer is subject to Title II of the federal Railway Labor Act; (2) the employee is not required to work more than 40 hours during a work week; and (3) the employee voluntarily agrees to trade scheduled work hours with another employee, resulting in the employee working more than 40 hours in a work week.

Fiscal Summary

State Effect: None. Although the bill pertains exclusively to private-sector employees, State enforcement is not materially affected.

Local Effect: None. The bill pertains exclusively to private-sector employees.

Small Business Effect: Potential minimal. To the extent that eligible airline employees of small businesses no longer qualify for additional overtime pay, those businesses' expenditures decrease.

Analysis

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 to provide a maintenance level consistent with the needs of the population. It specifies that an employee must be paid the higher of the federal minimum wage, which is currently \$7.25 per hour, or \$6.15 per hour.

The Maryland Wage and Hour Law, and minimum wage requirements, do 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. Exceptions to the minimum wage requirement also exist for training wages and disabled employees of a sheltered workshop.

An employer is 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 employs railroad carrier employees; 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, parts person, or salesperson, under certain conditions; or a driver 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 employer of a tipped employee is allowed a tip credit that can be applied against the direct wages paid by the employer. The employee can be paid tipping wages so long as the wages plus the tips received equal at least the minimum wage, the employee retains all tips, and the employee customarily receives more than \$30 a month in tips. The tip credit is currently 50% of the minimum wage or about \$3.63 per hour.

Fair Labor Standards Act (FLSA)

With some exceptions, similar to State law, FLSA requires that a worker be paid a minimum hourly wage and that overtime compensation be paid to employees who work more than 40 hours in a week. Under the federal Railway Labor Act, railroad and air carrier employees are exempt from the overtime pay requirement under FLSA.

Railway Labor Act

The Railway Labor Act is a federal law that governs labor relations in the railroad and airline industries. The Act seeks to prevent strikes by resolving labor disputes through bargaining, arbitration, and mediation, and it is enforced by the National Mediation Board. Title I of the Railway Labor Act applies to railroad carrier employees, while Title II extends the Act to include airline carrier employees.

Background: With limited exceptions, Title II of the federal Railway Labor Act applies to every person in the service of a railroad or air carrier who performs work. Since the Maryland Wage and Hour Law already exempts railroad carrier employees, the bill only affects air carrier employees.

Additional Information

Prior Introductions: None.

Cross File: SB 405 (Senator Middleton, *et al.*) – Finance.

Information Source(s): U.S. Department of Labor; U.S. Government Printing Office; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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