

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 374
Economic Matters

(Delegate McConkey, *et al.*)

Labor and Employment - Training Wage for New Employees - Establishment and Payment

This bill authorizes a county to establish a training wage for employees working in the county. The training wage may not be less than the federal minimum wage. An employer may pay an employee a training wage for the first two years of employment if the county in which the employee works established the training wage and the employee has not been employed previously by any employer.

Fiscal Summary

State Effect: None. There is no impact since the State minimum wage is the same as the federal minimum wage. If the State decides to set the State minimum wage above the federal minimum wage, there is no impact unless counties choose to establish a training wage for employees working in their county, in which case general fund expenditures potentially decrease minimally. Any increase in workload for the Department of Labor, Licensing, and Regulation can be carried out with existing resources. No effect on revenues.

Local Effect: None. There is no impact since the State minimum wage is the same as the federal minimum wage. If the State decides to set the State minimum wage above the federal minimum wage, there is no impact unless counties choose to establish a training wage for employees working in their county. Under this scenario, local government expenditures potentially decrease minimally.

Small Business Effect: None. However, if the State minimum wage is set above the federal minimum wage, the bill provides minimal potential relief to small businesses.

Analysis

Current Law: The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act (FLSA) of 1938. State law sets minimum wage standards to provide a maintenance level consistent with the needs of the population. State law specifies that an employee must be paid the greater of the federal minimum wage, which is currently \$7.25 per hour, or \$6.15 per hour. The State and local governments are considered employers under the Wage and Hour Law.

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; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, seafood; and certain farm workers. Exceptions to the minimum wage requirement also exist for training wages and disabled employees of a sheltered workshop.

An employee who is not subject to the federal FLSA, but is subject to the Maryland Wage and Hour Law, may be paid a training wage under regulations that the Commissioner of Labor and Industry adopts. However, the commissioner has not established a training wage for any employer.

Local Jurisdiction Labor Laws

Maryland counties operate under three forms of government: commission, charter home rule, and code home rule. Commission counties cannot enact local laws in areas where the General Assembly has not expressly granted authority, while charter counties have the authority to enact local laws. Code counties have authority to enact some local laws, but their power is not as extensive as charter home rule so the General Assembly must pass some local laws for code counties.

Charter counties have the authority to establish a local minimum wage rate under the Express Powers Act. The act grants a charter county council the authority to pass any ordinance, resolution, or bylaw, not inconsistent with State law, which may aid in executing and enforcing powers under the Express Powers Act or may aid in maintaining the peace, good government, health, and welfare of the county. A charter county may exercise these powers to the extent that the powers are not preempted by or in conflict with public general law. Charter counties have the authority to establish a training wage

so long as the training wage is the greater of the federal minimum wage or the State minimum wage. Currently, 10 counties exercise charter home rule.

Counties that exercise commission or code home rule have not been delegated the police power that charter counties have, so they lack the legal authority to establish a local minimum wage. Baltimore City has police power, so it can establish and enforce a local minimum wage rate. **Exhibit 1** shows the form of government for each Maryland county.

Exhibit 1
Forms of County Governments in Maryland

<u>Charter</u>	<u>Commission</u>	<u>Code</u>
Anne Arundel	Calvert	Allegany
Baltimore	Carroll	Caroline
Cecil	Frederick ¹	Charles
Dorchester	Garrett	Kent
Harford	St. Mary's	Queen Anne's
Howard	Somerset	Worcester
Montgomery	Washington	
Prince George's		
Talbot		
Wicomico		

¹Frederick County will become a charter home rule county on December 1, 2014.

Source: Department of Legislative Services

Montgomery County and Prince George's County passed local minimum wage laws in 2013, Montgomery County Bill 27-13 and Prince George's County Bill CB-94-2013. Both bills phase in minimum wage increases over four years. The bills increase the minimum wage to \$8.40 per hour beginning October 1, 2014; \$9.55 per hour beginning October 1, 2015; \$10.75 per hour beginning October 1, 2016; and \$11.50 per hour beginning October 1, 2017. The county minimum wage for Montgomery and Prince George's counties do not apply to an employee who is exempt from the minimum wage requirements of the Maryland Wage and Hour Law or the federal FLSA or to an employee who is younger than age 19 and is employed no more than 20 hours in a week.

Baltimore City enacted a city minimum wage rate in 1964, which was challenged in the State Court of Appeals in *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969). The court found that the State's minimum wage rate did not preempt Baltimore's

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minimum wage law since Baltimore's law supplemented the State law by setting a higher rate. Baltimore still has its own minimum wage statute, but it currently sets the minimum wage rate at the federal rate.

Fair Labor Standards Act

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. There are two ways in which an employee can be covered by FLSA: "enterprise coverage" and "individual coverage."

Enterprise Coverage: Employees who work for certain businesses or organizations are covered by FLSA. These enterprises, which must have at least two employees, are (1) those that have an annual dollar volume of sales or business done of at least \$500,000 or (2) hospitals, businesses that provide medical or nursing care, schools and preschools, and government agencies.

Individual Coverage: Even where there is no enterprise coverage, employees may be covered by FLSA if their work regularly involves them in interstate commerce. FLSA covers individual workers who are engaged in commerce or in the production of goods for commerce. Examples of employees who are involved in interstate commerce include those who (1) produce goods that will be sent out of state; (2) regularly make telephone calls to persons located in other states; (3) handle records of interstate transactions; (4) travel to other states for work; or (5) perform janitorial work where goods are produced for shipment to another state. Also, domestic service workers (*i.e.*, housekeepers, full-time baby sitters, and cooks) are normally covered by FLSA. However, many agricultural workers are not subject to FLSA minimum wage and overtime standards.

Under FLSA, an employer may pay a minimum wage of \$4.25 an hour for newly hired employees younger than age 20 during their first 90 consecutive calendar days after being hired by their employer.

Background: According to the Maryland Workforce Exchange, approximately 11% of Marylanders currently searching for jobs have less than one year of work experience and only 5% of companies advertising jobs online in Maryland require less than one year of experience.

Other states have training or youth wages set below their state's minimum wage. For example, Iowa allows an "initial employment wage" of \$6.35 per hour for the first 90 days of employment. Illinois has a minimum wage for employees younger than

age 18 of \$7.75 per hour, while the minimum wage for those older than 17 is \$8.25 per hour.

State Expenditures: If the State raises the minimum wage above the federal minimum wage rate and counties choose to establish training wages, expenditures may decrease.

The Department of Budget and Management (DBM) advises that, within the State Personnel Management System (SPMS), the lowest base salary of standard salary grade positions is an hourly rate of \$10.67, so it is unlikely that the State will be affected by a county establishing a training rate. DBM advises that some contractual and temporary employees, primarily within the Department of Natural Resources and the Department of Health and Mental Hygiene, earn hourly wages at or just above minimum wage, so if training wages are established in counties where these employees work, expenditures (all funds) may increase. SPMS employs 149 part-time senior citizen aides through the Maryland Department of Aging (MDoA) who are paid the minimum wage. If training wages are established in counties where senior citizen aides with no prior work experience are employed, then MDoA federal fund expenditures decrease minimally. However, this decrease in federal fund expenditures is fully offset by a decrease in federal fund revenues as the aides are paid with federal funds.

Local Expenditures: According to the Maryland Association of Counties, several mid-size counties employ approximately 40 entry-level salaried employees and between 100 and 200 part-time summer staff for recreational and community programs at the minimum wage. If the State raises the minimum wage above the federal minimum wage rate, expenditures for these counties may decrease if they establish a training wage and hire workers who have never worked before.

Small Business Effect: There is no impact since the State minimum wage is the same as the federal minimum wage. If the State decides to set the State minimum wage above the federal minimum wage, there is no impact unless a county chooses to establish a training wage for employees working in the county. Under this scenario, a business would have to hire a worker who has never been previously employed in order to pay that worker a training wage for the first two years of employment. Since most workers have prior work experience and many jobs require prior work experience, small businesses would only be able to pay training wages to few, if any, employees.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Maryland Association of Counties; U.S. Department of Labor; Iowa Division of Labor; Illinois Department of Labor; Department of Legislative Services

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