

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 949
Economic Matters

(Delegate McDonough, *et al.*)

Labor and Employment - Training Wage for Newly Hired Employees -
Establishment

This bill authorizes an employer with fewer than 101 employees to pay employees who are hired by the employer for the first time a training wage of \$7.25 if the employee is not subject to the federal minimum wage. However, if the employee is subject to the federal minimum wage and the wage is less than the State wage, the training wage is the federal minimum wage. A training wage may only be paid for the first 90 days that the employee is employed, unless the employer employs fewer than 51 employees, in which case training wages may be paid for the first six months that the employee is employed.

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 on State personnel since the State employs more than 100 employees, but the Department of Labor, Licensing, and Regulation may need additional resources for enforcement. Any such impact has not been accounted for in this analysis. 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 for local governments that employ at least 101 employees. If a local government employs fewer than 101 employees, 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

Charter counties have the authority to establish a local minimum wage rate under the Express Powers Act. Currently, 10 counties exercise charter home rule: Anne Arundel, Baltimore, Cecil, Dorchester, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico, with Frederick County changing to charter home rule on December 1, 2014. Additionally, Baltimore City has police power, so it can establish and enforce a local minimum wage rate. Counties that exercise commission or code home rule have not been delegated the police power that charter counties and Baltimore City have, so they lack the legal authority to establish a local minimum wage.

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 both Montgomery and Prince George's counties does 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 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: 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.

Local Expenditures: According to the Maryland Association of Counties, most, if not all, counties employ more than 100 employees so there is no fiscal effect for these counties. If the State raises the minimum wage above the federal minimum wage rate, expenditures for counties and municipalities fewer than 101 employees may decrease when they hire an employee for the first time.

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, a business would have to hire an employee for the first time in order to pay that employee a training wage for the first 90 days or six months of employment, depending on how many employees the employer employs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Caroline, Howard, and Montgomery counties; cities of Baltimore, Bowie, and Takoma Park; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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Analysis by: Heather N. Ruby

Direct Inquiries to:
(410) 946-5510
(301) 970-5510