

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE

House Bill 882 (Delegate McDonough)  
Economic Matters and Appropriations

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Maryland Workers Fairness Act

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This bill requires an employer to grant a hiring preference when considering an application for employment to an individual who is either a U.S. citizen or lawfully present in the United States in accordance with federal law over an individual who has applied for deportation relief in accordance with the immigration accountability executive actions (IAEA) issued by the President of the United States in November 2014.

The bill applies prospectively and may not be applied to or interpreted to have any effect on or application to any cause of action arising before the bill's October 1, 2015 effective date.

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Fiscal Summary

**State Effect:** None. As a result of a federal court's temporary injunction, individuals are not being granted deportation relief under IAEA, so the bill has no effect until individuals begin receiving deportation relief. Once individuals begin receiving deportation relief, the bill does not materially affect State finances.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** Under federal law, it is illegal to hire an individual without first making a good faith effort to verify that the individual is not an unauthorized alien. Federal law defines an unauthorized alien with respect to employment as an alien who is either not

lawfully admitted to the country for permanent residence or not authorized to be so employed. Employers certify on federal Form I-9 that they have reviewed employees' documentation and that the documents appear genuine.

Discrimination in public accommodations, labor and employment, and housing on the basis of race, sex, age, creed, color, religion, national origin, marital status, disability, gender identity, and sexual orientation is prohibited.

The federal Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

Antidiscrimination laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits. EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. If EEOC finds that discrimination has occurred, it will try to settle the charge. If not successful, EEOC has the authority to file a lawsuit to protect the rights of individuals and the interests of the public but does not, however, file lawsuits in all cases in which there was a finding of discrimination.

The federal Immigration and Nationality Act prohibits citizenship or immigration status discrimination with respect to hiring, firing, and recruiting or referring for a fee by employers with 4 or more employees. Employers with more than 3 and fewer than 15 employees may not discriminate against national origin with respect to hiring, firing, and recruiting or referring for a fee.

**Background:** President Obama issued IAEA in November 2014, with the stated goal of (1) decreasing illegal immigration at the U.S. border; (2) focusing on deporting felons, not families; and (3) requiring specified undocumented immigrants to pass criminal background checks and pay taxes.

The actions expand the existing Deferred Action for Childhood Arrivals (DACA) program. Under the initial DACA program, young people who had been in the United States for at least five years, came as children, and met specific education and public safety criteria were eligible for temporary relief from deportation so long as they were born after 1981 and entered the country before June 15, 2007. IAEA expands the program so that individuals of any current age who entered the United States before the age of 16 can request deferred

action and employment authorization, provided they have lived in the United States continuously since January 1, 2010, and it extends deferred action and work authorization from two years to three years. Additionally, IAEA allows parents of U.S. citizens and lawful permanent residents to request deferred action and employment authorization for three years in a new program, provided they have lived in the United States continuously since January 1, 2010, and pass required background checks.

In December 2014, 26 states challenged IAEA in *State of Texas v. United States of America*, Civil No. B-14-254. In the case, the plaintiffs argue that IAEA creates a discriminatory employment environment that encourages employers to hire IAEA beneficiaries instead of those with lawful permanent status in the United States. The Affordable Care Act (ACA) requires that employers provide health insurance only to those individuals legally present in the United States, which excludes IAEA beneficiaries. Thus, if an employer hires an IAEA beneficiary, it does not have to offer that individual health care nor does it incur a monetary penalty for failing to do so.

The Federal District Court for the Southern District of Texas issued a temporary injunction on February 16, 2015, against IAEA, stating it would impose major burdens on states. Thus, the U.S. Citizenship and Immigration Services did not begin accepting requests for the expansion of DACA on February 18, 2015, as originally planned, and will not begin accepting applications from undocumented workers until the case is settled. The President plans to appeal the court ruling.

**State Expenditures:** Currently, no individuals are being granted employment authorization under IAEA, so the bill has no effect. If individuals are granted employment authorization under IAEA, the Commissioner of Labor and Industry may investigate whether the bill's provisions have been violated with existing resources. While the Commissioner of Labor and Industry has the authority to investigate violations, the bill has no enforcement provisions so the Commissioner of Labor and Industry cannot compel employers to comply with the bill. The commission's office advises that it will likely refer any cases to the U.S. Citizenship and Immigration Services.

Granting a hiring preference to an individual who is either a U.S. citizen or lawfully present in the United States in accordance with federal law does not materially alter the labor market because it is already illegal to hire noncitizens who are not in the United States lawfully. However, the bill could increase the number of discrimination complaints and litigation regarding citizenship or immigration status and national origin discrimination. Any increase in complaints and litigation can be handled with existing resources.

Current State employees, veterans and spouses of veterans, residents of high unemployment counties for specified positions in correctional facilities, and State residents receive a hiring preference for positions within the State Personnel Management System

requiring a selection test. The Department of Budget and Management (DBM) advises that adding an additional preference could potentially further dilute the value of the testing process and the preference given to these other groups. Additionally, DBM advises that including an additional hiring preference requires reprogramming its personnel management system. The expected cost is between \$6,000 and \$20,000. However, the Department of Legislative Services assumes that few individuals eligible for deportation relief under IAEA would apply for State positions and that any hiring preferences can be granted with existing resources.

**Small Business Effect:** Currently, individuals are not being granted employment authorization under IAEA, so the bill does not affect small businesses. If individuals are granted employment authorization under IAEA, a small business may incur additional costs for hiring an individual who is either a U.S. citizen or lawfully present in the United States instead of an IAEA beneficiary due to ACA. However, the bill has no enforcement provisions, so if an employer opts not to grant a hiring preference to U.S. citizens or individuals lawfully present in the United States, then the employer likely faces no repercussions.

**Additional Comments:** The bill does not explicitly include the State or local governments as “employers” under the bill, but the State and local governments are subject to the anti-discrimination provisions under § 20-606 of the State Government Article. Therefore, for the purpose of this analysis, it is assumed that the bill applies to the State and local governments as employers.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Dorchester, Queen Anne’s, and Washington counties; Maryland Municipal League; Office of the Attorney General; Department of Budget and Management; Maryland Commission on Civil Rights; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; U.S. Citizenship and Immigration Services; United States District Court; American Immigration Council; *The New York Times*; Department of Legislative Services

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